Supreme Court, U.S.
FILED

(1)

03 52 JUL 3 2003
No. ___
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

AMERICAN AIRLINES, INC., and TERRY MEENAN,
Petitioners,

v.

ARTHUR GEDDES,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

TERENCE G. CONNOR
LISA R. ASKOWITZ
MORGAN, LEWIS
& BOCKIUS LLP
5300 Wachovia Financial Center
200 South Biscayne Boulevard
Miami, Florida 33131-2339
(305) 415-3000

RICHARD A. MALAHOWSKI
JENNIFER BRANDEIS
AMERICAN AIRLINES, INC.
P.O. Box 619616
Dallas/Ft. Worth Airport,
Texas 75261
(817) 967-1260

HARRY RISSETTO *
THOMAS E. REINERT, JR.
MORGAN, LEWIS
& BOCKIUS LLP
1111 Pennsylvania Ave., N.W.
Washington, D.C. 20004
(202) 739-3000

* Counsel of Record

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

82 pp

QUESTION PRESENTED

Whether the doctrine of "complete preemption," which confers removal jurisdiction and has long applied to state claims requiring interpretation of collective bargaining agreements under the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185 *et seq.*, also applies to similar state law claims requiring interpretation of collective bargaining agreements under the Railway Labor Act ("RLA"), 45 U.S.C. § 151 *et seq.*?

PARTIES TO THE PROCEEDINGS

The only parties to the proceedings are those listed in the caption of the case.

STATEMENT UNDER RULE 29.6

Pursuant to Rule 29.6, the parent corporation of American Airlines, Inc. is AMR Corporation. The following mutual fund families each own more than 10% of AMR Corp.'s stock. The stock is dispersed through their constituent mutual funds: FMR Corp. (Fidelity Investments), Lord Abbott & Co., and Primecap Management Co.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
PARTIES TO THE PROCEEDINGS	ii
STATEMENT UNDER RULE 29.6	ii
TABLE OF AUTHORITIES	iv
JURISDICTION	1
STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	2
A. Course of Proceedings and Disposition Below	2
B. Statement of Facts	3
REASONS FOR GRANTING THE PETITION	5
I. REVIEW IS NECESSARY TO PRESERVE THE CRITICAL ROLE OF THE FEDERAL COURTS TO ENFORCE THE RLA ADJUSTMENT BOARD PROCEDURES	6
II. REVIEW IS NECESSARY TO RESOLVE CONFLICT IN THE CIRCUITS AND TO CORRECT THE COURT OF APPEALS' ERRONEOUS VIEW OF THE FEDERAL INTEREST IN COMPLETE PREEMPTION AS LESS UNDER THE RLA THAN THE LMRA	10
CONCLUSION	16

TABLE OF AUTHORITIES

FEDERAL CASES Page

Anderson v. H&R Block, Inc., 287 F.3d 1038 (11th Cir. 2003) 12
Andrews v. Louisville & Nashville R. Co., 406 U.S. 320 (1972) 8, 12
Avco Corp. v. Aero Lodge No. 735, International Association of Machinists & Aerospace Workers, 390 U.S. 557 (1968) 11
Beneficial National Bank v. Anderson, ___ U.S. ___, 123 S. Ct. 2058 (June 2, 2003) 12
Boys Markets, Inc. v. Retail Clerks Union, Local 770, 398 U.S. 235 (1970) 14
Brotherhood of R. R. Trainmen v. Chicago River & Ind. R.R. Co., 353 U.S. 30 (1957) 8
Consolidated Rail Corp. v. Railway Labor Exec. Association, 491 U.S. 299 (1989) 9
Deford v. Soo Line R.R. Co., 867 F.2d 1080 (8th Cir. 1989) 6
Franchise Tax Board of Cal. v. Construction Laborers Vacation Trust for Southern Cal.,463 U.S. 1 (1983) 11
Geddes v. American Airlines, Inc., 321 F.3d 1349 (11th Cir. 2003) 1, 3, 14
Gore v. Trans World Airlines, 210 F.3d 944 (8th Cir. 2000) 5, 10
Hawaiian Airlines v. Norris,512 U.S. 246 (1994) 2, 3, 9, 13
International Association of Machinists, AFL-CIO v. Central Airlines, Inc., 372 U.S. 682 (1963) 6, 7, 8
Lingle v. Norge Division of Magic Chef, Inc., 486 U.S. 399 (1988) 13, 15
Metropolitan Life Insurance Co. v. Taylor, 481 U.S. 58 (1987) 11

TABLE OF AUTHORITIES—Continued

	Page
O'Brien v. Duluth, Missabe & Iron Range Railway, 27 F.3d 569 (7th Cir. 1994)	5, 10, 11
Railway Labor Executives Association v. Pittsburgh & Lake Erie R.R. Co., 858 F.2d 936 (3d Cir. 1988)	5
Schroeder v. Trans World Airlines, Inc., 702 F.2d 189 (9th Cir. 1983)	5, 11
Shafii v. British Airways, PLC, 83 F.3d 566 (2d Cir. 1996)	5, 10
Union Pacific R.R. v. Sheehan, 439 U.S. 89 (1978)	7
United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960)	15
STATUTES	
Arbitration Act of 1888, Ch. 1063, 25 Stat. 501 (Oct. 1, 1888)	6
12 U.S.C. § 85	12
12 U.S.C. § 86	12
28 U.S.C. § 1254(1)	2
28 U.S.C. § 1441	2, 12
29 U.S.C. § 159	15
29 U.S.C. § 185 *et seq.*	i
45 U.S.C. § 151 *et seq.*	i, 2
45 U.S.C. § 151	2
45 U.S.C. § 151a	6
45 U.S.C. § 152	2, 3, 9
45 U.S.C. § 153	2, 6, 7, 9, 12
45 U.S.C. § 156	9
45 U.S.C. § 157	7
45 U.S.C. § 158	7
45 U.S.C. § 181-85	6
45 U.S.C. § 184	2, 8, 9, 12

TABLE OF AUTHORITIES—Continued

MISCELLANEOUS

Page

Leslie, Douglas C., *The Railway Labor Act* 91-93 (ed. 1995) 15

IN THE

Supreme Court of the United States

No. ___

AMERICAN AIRLINES, INC., and TERRY MEENAN,
Petitioners,

v.

ARTHUR GEDDES,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

---

PETITION FOR A WRIT OF CERTIORARI

American Airlines, Inc., and Terry Meenan respectfully petition for a writ of certiorari to review the judgment of the court of appeals in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. A) is reported at 321 F.3d 1349 (11th Cir. 2003). The opinion of the district court (App. B) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on February 21, 2003. The court of appeals denied the petition for hearing *en banc* on May 19, 2003. *See Geddes v.*

American Airlines, Inc., ___ F.3d ___ (11th Cir. May 19, 2003) (Table, No. 02-13885). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

This case concerns the Railway Labor Act, 45 U.S.C. § 151 *et. seq.*, relevant portions of which are reproduced in Appendix C. *See* 45 U.S.C. §§ 151, 152, 153, 181, 184.

STATEMENT OF THE CASE

A. Course of Proceedings and Disposition Below

Arthur Geddes ("Geddes"), an employee of American Airlines, Inc. ("American"), filed claims in the Florida circuit court alleging the torts of negligence and defamation based on American's investigation of his alleged workplace misconduct and resulting discipline. American removed the case to the district court under 28 U.S.C. § 441, asserting federal question jurisdiction because Geddes' claims were completely preempted by the Railway Labor Act (RLA), 45 U.S.C. § 151, *et. seq.* American then moved to dismiss the case based on the RLA's exclusive and mandatory procedures to resolve "minor disputes" requiring interpretation or application of a collective bargaining agreement by an adjustment board.

The district court denied Geddes' Motion to Remand and granted American's Motion to Dismiss. Relying, in part, on this Court's adoption of the standard applied for ordinary preemption of LMRA claims to resolve claims of RLA ordinary preemption in *Hawaiian Airlines v. Norris*, 512 U.S. 246 (1994), the district court applied the "complete preemption" exception to the "well-pleaded complaint" rule to hold that state law claims which require the interpretation or application of a collective bargaining agreement under the

RLA—like those that require interpretation of a collective bargaining agreement under the LMRA—provide grounds for removal.

On appeal, the Court of Appeals for the Eleventh Circuit acknowledged the strong federal policy of exclusive and mandatory adjustment board jurisdiction to resolve RLA "minor disputes." *Geddes*, 321 F.3d at 1354. The court of appeals also accepted that the Supreme Court opinion in *Hawaiian Airlines* "might lead one to conclude that the analogy between the RLA and the LMRA should extend to application of the doctrine of complete preemption." *Id.* at 1355. And the court of appeals noted that, except for one, all of the other circuits to consider the issue have found complete preemption under the RLA. *Id.* at 1356-57. Nevertheless, based on an erroneous and unwarranted distinction between claims under the LMRA and the RLA, the court of appeals held that the doctrine of complete preemption does not apply to the RLA. Removal of Geddes' claims was therefore improper. *Id.* at 1357. The court of appeals reversed and remanded the case to the district court, which has, in turn, remanded to the Florida circuit court.

B. Statement of Facts

Geddes is an aircraft technician employed by American at Miami International Airport. Geddes' employment with American is governed by a collective bargaining agreement between American and the Transport Workers Union (TWU), entered pursuant to the RLA. *See* 45 U.S.C. § 152, First; § 184.

Consistent with the collective bargaining agreement, American has promulgated Rules of Conduct to regulate its employees' behavior in the workplace, and has implemented detailed procedures for supervisors to follow when conducting investigations regarding employee misconduct in the workplace. The collective bargaining agreement provides

that an employee may not be disciplined or discharged in the absence of "just cause," and the agreement requires carrier investigation of alleged employee misconduct as a necessary predicate to disciplinary action and the grievance procedures of the collective bargaining agreement that culminates in system board arbitration.

According to Geddes' Complaint, his co-worker told American's Human Resources Manager[1] and two other managers that Geddes had "threatened to cut [the co-worker's] intestines with a piece of metal at the workplace." As the collective bargaining agreement provides, Geddes was temporarily suspended, and American undertook to investigate the alleged threat made by Geddes pursuant to the investigative procedures set forth in the agreement.

Geddes alleges that American committed torts of defamation and negligence during its conduct of the contractual investigation procedure. According to Geddes, in investigating the accusation by his co-worker, American managers re-published the accusation to other American managers, supervisors, union representatives, and witnesses. All of these individuals were necessary participants in the investigation regarding Geddes' alleged misconduct.[2] American also allegedly placed documents in Geddes' personnel file that included a description of the accusation and the progress of the investigation. Finally, American meted discipline to Geddes in the form of a disciplinary advisory.

---

[1] American's Human Resources Manager was (and is) the individual petitioner here, Terry Meenan. She was joined below for the apparent purpose of destroying alternative diversity jurisdiction.

[2] Geddes also alleges defamation in American's response to the EEOC charge he filed, but did not pursue in litigation.

REASONS FOR GRANTING THE PETITION

This petition involves an issue of exceptional importance under the Railway Labor Act (RLA). The question presented goes to the critical role of the federal courts to preserve the exclusive jurisdiction of the statutory adjustment boards over "minor disputes" requiring interpretation of collective bargaining agreements. When a plaintiff "artfully pleads" a purported state law claim, in an attempt to evade the adjustment board procedure, and the employer argues that the claim actually requires interpretation of an RLA collective bargaining agreement, the court is called upon to apply well established federal common law and to determine whether or not the substantive claim is within the mandatory and exclusive jurisdiction of the adjustment board. That judicial determination is a federal question. The Court long has relegated that same jurisdictional determination to the federal courts in the context of the Labor Management Relations Act (LMRA) (where arbitration of grievances is contractual), applying the "complete preemption" exception to the "well-pleaded complaint" rule to confer removal jurisdiction. The federal courts should make the same jurisdictional determination in the context of the RLA (where arbitration is mandated by federal statute).

The Second, Seventh, Eighth, and Ninth Circuits correctly have recognized the application of the "complete preemption" doctrine under the RLA,[3] but the Eleventh Circuit has reached the opposite conclusion erroneously.[4] Intervention by this

---

[3] *See Gore v. Trans World Airlines*, 210 F.3d 944 (8th Cir. 2000); *Shafii v. British Airways, PLC*, 83 F.3d 566 (2d Cir. 1996); *O'Brien v. Duluth, Missabe & Iron Range Ry.*, 27 F.3d 569 (7th Cir. 1994); *Schroeder v. Trans World Airlines, Inc.*, 702 F.2d 189 (9th Cir. 1983).

[4] The Third Circuit is the only other Circuit that does not apply "complete preemption" under the RLA. *See Railway Labor Executives Ass'n v. Pittsburgh & Lake Erie R.R. Co.*, 858 F.2d 936 (3d Cir. 1988). This decision later was criticized by the Eighth Circuit as "unnecessarily

Court is necessary to resolve conflict among the circuits and to preserve the special role of the federal courts in enforcing the RLA's statutory adjustment board procedures by uniformly determining whether a claim constitutes a "minor dispute" subject to the exclusive jurisdiction of the adjustment boards under the grievance-arbitration procedures of the RLA.

I. REVIEW IS NECESSARY TO PRESERVE THE CRITICAL ROLE OF THE FEDERAL COURTS TO ENFORCE THE RLA ADJUSTMENT BOARD PROCEDURES

The central error of the court of appeals' decision is that it ignores the overriding federal interest in enforcing the nonjudicial procedures of the Railway Labor Act. The RLA was enacted in 1926 (and extended to the airline industry in 1936) to create a federal procedure for the making and maintaining of collective bargaining agreements covering carriers and their employees. 45 U.S.C. § 151a.[5] Part of that statutory scheme is that disputes over the interpretation or application of collective bargaining agreements, termed "minor disputes," are to be heard exclusively by the adjustment boards mandated by the Act under 45 U.S.C. § 153 (railroads) and § 184 (airlines). The resulting decisions of these boards are subject to limited federal court review. *See Int'l Ass'n of Machinists, AFL-CIO v. Central Airlines, Inc.*, 372 U.S. 682 (1963). Notably, to the extent that the RLA provides for any court involvement in relation to "minor disputes," it explicitly reserves such functions to the federal courts. *See* 45 U.S.C.

---

narrow." *See Deford v. Soo Line R.R. Co.*, 867 F.2d 1080, 1086 (8th Cir. 1989).

[5] The RLA is the latest of a series of legislative enactments to regulate labor disputes in the railroad industry, which began with the Arbitration Act of 1888, Ch. 1063, 25 Stat. 501 (Oct. 1, 1888). The RLA, enacted in 1926, was later amended to include airlines. *See* 45 U.S.C. §§ 181-85.

§ 153(p) (petitions to enforce adjustment board orders may be filed in the district courts); § 157(f) (original arbitration award shall be filed with the clerk of the district court); § 158(k) (arbitration agreements shall provide that the award shall be filed with the clerk of the district court).

The efficacy of this system to normally nationwide collective bargaining relationships depends on the role of the federal courts as centralized gatekeepers and cannot admit of state-by-state adjudication of this basic jurisdictional question. The state courts tend to be focused on local concerns, a perspective that is incompatible with resolving whether a common law claim requires interpretation of a system-wide agreement, normally with nationwide implications. The possibility of inconsistent outcomes increases in proportion to the greater number of state courts that would, under the Eleventh Circuit's decision, consider whether claims arguably involve interpretation of a collective bargaining agreement. The Court has recognized the danger of inconsistent outcomes from the state courts that could confuse the administration of system-wide, and normally nationwide, collective bargaining agreements:

> Congress in 1936 could not . . . have thought that stability and continuity to interstate air commerce would come from the undulating policies . . . of the legislatures and courts (or both) of 48 states in the enforcement of anything thought so essential to industrial peace as this system of governmentally compelled arbitration.

Central Airlines, 372 U.S. at 691-92 n.15.

Accordingly, the Court has consistently emphasized that Congress considered it essential to keep minor disputes within the RLA adjustment board system—in which the boards can develop consistent system-wide rules and working conditions—and out of the courts. *See Union Pacific R.R. v. Sheehan*, 439 U.S. 89, 94 (1978). In order to protect that federal statutory scheme, the Court has repeatedly recognized

federal court jurisdiction to enforce the procedures of the RLA in order to ensure that "minor disputes" involving interpretation of collective bargaining agreements are heard exclusively by the adjustment boards mandated by the statute. For example, *Andrews v. Louisville & Nashville R. Co.*, 406 U.S. 320 (1972), like the present case, was a state action that was removed to federal court and dismissed as a minor dispute. The Court reiterated the compulsory nature of the RLA's adjustment board procedures, holding that the plaintiff's characterization of his claim as one for "wrongful discharge" under state law did not save it from dismissal in favor of the RLA's procedures. *Id.* at 323-24. In so ruling, the Court reviewed an earlier decision, stating: "In *Machinists v. Central Airlines,* 372 U.S. 682 (1963), an agreement required under §204 of the Railway Labor Act [45 U.S.C. § 184] was said to be like the Labor Management Relations Act § 301 contract . . . a federal contract and . . . therefore *governed and enforceable by federal law, in the federal courts*." (emphasis added). *Id.* at 323. Thus *Andrews* both illustrates the appropriateness of removal and specifically reiterates the central role of federal courts to enforce the RLA "minor dispute" procedures.

The Court similarly recognized the importance of federal court jurisdiction to enforce the adjustment board procedures established by the RLA in *Brotherhood of R. R. Trainmen v. Chicago River & Ind. R.R. Co.*, 353 U.S. 30 (1957). In *Chicago River*, the Court addressed whether a federal court could enjoin a strike over a "minor dispute" notwithstanding the Norris-LaGuardia Act's restrictions on federal court jurisdiction to issue injunctions in labor disputes. The Court stated that "[t]he . . . question . . . is whether the federal courts can compel compliance with the provisions of the Act to the extent of enjoining a union from striking to defeat the jurisdiction of the Adjustment Board," and concluded that such federal judicial authority existed "notwithstanding the provisions of the Norris-LaGuardia Act." The accommo-

dation of the Norris-LaGuardia Act and the Railway Labor Act was resolved in favor of permitting injunctions to support the functioning of adjustment boards.

Moreover, federal court intervention under the RLA is not limited to strikes. There is a category of RLA disputes in which the federal courts are required to distinguish "major" from "minor" disputes, so that the federal courts may direct disputes to the appropriate statutorily-mandated procedure. *Compare* 45 U.S.C. §152 Seventh, § 156 (requiring bargaining and mediation for disputes over the formation of agreements, "major disputes") *with* §§ 153, 184 (requiring arbitration of disputes involving the application or interpretation of agreements, "minor disputes"). In *Consolidated Rail Corp. v. Railway Labor Exec. Ass'n*, 491 U.S. 299, 305-06 (1989), the Court noted that the determination as to whether a claim is a "major" dispute or a "minor" dispute—similar to the determination in the instant case whether a claim is a state law tort or a "minor dispute" under the RLA —"is a matter of pleading." *Id.* at 305. The Court explicitly recognized the critical role of the federal courts to properly characterize claims so as to protect the RLA's procedures:

> The party who initiates a dispute takes the first step toward categorizing the dispute when it chooses whether to assert an existing contractual right or to take or to resist the action in question. But the Court of Appeals early recognized that there is a danger in leaving the characterization of the dispute solely in the hands of one party. . . . In such circumstances, protection of the proper functioning of the statutory scheme requires the court to substitute its characterization for that of the claimant.

Id. at 305-06 (finding that union's claim constituted "minor" dispute subject to system board adjustment despite union's characterization of claim as "major" dispute); *see also Hawaiian Airlines*, 512 U.S. at 256-263 (describing development of case law).

Admittedly, none of these RLA cases address "complete preemption." But it is beyond peradventure that the federal courts have consistently exercised jurisdiction to enforce and protect the exclusive jurisdiction of the adjustment boards over "minor disputes." The same intense federal interest in the RLA "minor dispute" procedures, which in *Chicago River* supported federal court jurisdiction to keep "minor disputes" out of the streets, also supports federal court jurisdiction to keep "minor disputes" out of the state courts.

The court of appeals failed to understand and give weight to this important RLA policy in addressing the "complete preemption" issue. Its decision represents a marked departure from this Court's enunciated principles of federal court jurisdiction to preserve the jurisdiction of the adjustment boards. Review by this Court is necessary to ensure the role of the federal courts to enforce the procedures of the RLA and to prevent a proliferation of decisionmakers in the state courts, operating under different state standards for ruling on dispositive motions, and resulting in inconsistent results.

II. REVIEW IS NECESSARY TO RESOLVE CONFLICT IN THE CIRCUITS AND TO CORRECT THE COURT OF APPEALS' ERRONEOUS VIEW OF THE FEDERAL INTEREST IN COMPLETE PREEMPTION AS LESS UNDER THE RLA THAN THE LMRA

The court of appeals' view of the federal interest in complete preemption as less under the RLA than the Labor Management Relations Act (LMRA) overlooks the pervasive federal interest in protecting the exclusive jurisdiction of the adjustment boards over "minor disputes" under the RLA. The court's decision conflicts with decisions of the Courts of Appeals for the Second, Seventh, Eighth and Ninth Circuits.[6]

---

[6] *See Gore v. Trans World Airlines*, 210 F.3d 944 (8th Cir. 2000); *Shafii v. British Airways, PLC*, 83 F.3d 566 (2d Cir. 1996); *O'Brien v.*

In each of those decisions, the court affirmed the doctrine of complete preemption to support removal to the federal courts. If allowed to stand, the decision of the Eleventh Circuit will undermine the very purpose of the RLA, by creating, for example, a checker-board of local court decisions determining whether the interpretation of a given collective bargaining agreement provision may be involved in some common law tort claim.

The "complete preemption" doctrine originated under the LMRA in this Court's opinion in *Avco Corp. v. Aero Lodge No. 735, Int'l Ass'n of Machinists & Aerospace Workers*, 390 U.S. 557 (1968). The Court held that Avco's suit brought in state court to enjoin a strike necessarily arose under section 301 of the LMRA and was removable even though the company had pled only state law claims: "[When] the heart of the [state law] complaint [is] a . . . clause in the collective bargaining agreement," that complaint arises under federal law. *Id.* at 558. As the Court later explained in *Franchise Tax Bd. of Cal. v. Construction Laborers Vacation Trust for Southern Cal.*, 463 U.S. 1, 23 (1983): "The necessary ground of decision [in *Avco*] was that the preemptive force of §301 is so powerful as to displace entirely any state cause of action for violation of contracts between an employer and a labor organization."[7]

Although the Court has addressed the "complete preemption" doctrine only sparingly over the years, earlier this month, the Court reversed the Eleventh Circuit and held that the "complete preemption" doctrine applies to confer removal jurisdiction over claims of usury against national banks. *See*

Duluth, Missabe & Iron Range Ry., 27 F.3d 569 (7th Cir. 1994); *Schroeder v. Trans World Airlines, Inc.*, 702 F.2d 189 (9th Cir. 1983).

[7] In *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58 (1987), the Court applied the "complete preemption" doctrine to claims under section 502(a) of ERISA, which provides for exclusive federal resolution of employee benefit disputes under a covered plan.

Beneficial Nat'l Bank v. Anderson, ___ U.S. ___, 123 S. Ct. 2058 (June 2, 2003). The Eleventh Circuit's decision that is the subject of this petition followed that court's now-reversed decision in *Beneficial Nat'l Bank*. In *Beneficial Nat'l Bank*, the Eleventh Circuit had held that the "complete preemption" doctrine did not apply because there was no evidence of "clear congressional intent to permit removal" under the National Bank Act, 12 U.S.C. §§ 85, 86. *See Anderson v. H&R Block, Inc.*, 287 F.3d 1038 (11th Cir. 2003). This Court reversed, holding that because the National Bank Act provides the exclusive cause of action for usury claims against national banks, purported state law claims alleging that a national bank violated usury laws necessarily arise under federal law and may be removed under 28 U.S.C. § 1441. The Court explained its earlier "complete preemption" decisions as providing the following framework for determining whether the doctrine applies: **If the federal statute asserted to be preemptive by the defendant provides the exclusive cause of action for the claim at issue, then the claim necessarily arises under federal law and is removable.** *Beneficial National Bank*, ___ U.S. at ___, 123 S. Ct. at 2063. The rationale for the court of appeals' decision in the present case is in conflict with the Court's decision in *Beneficial National Bank*.

This case presents the Court with an opportunity to confirm the applicability of the "complete preemption" doctrine to disputes over collective bargaining agreements formed under the RLA—as it has done for disputes over collective bargaining agreements formed under the LMRA. A finding of complete preemption is consistent with the framework reiterated in *Beneficial National Bank*. The RLA, like the LMRA, undisputedly creates an exclusive forum for disputes over the interpretation or application of collective bargaining agreements and *excludes* state causes of action that require that interpretation or application. *See* 45 U.S.C. §§ 153, 184; *see also, e.g., Andrews*, 406 U.S. at 323-24. Moreover, the

Court has adopted the same standard for ordinary preemption of LMRA and RLA claims, further supporting similar application of "complete preemption" principles under both labor laws.

The standard for ordinary preemption of LMRA claims was clarified by the Court in *Lingle v. Norge Division of Magic Chef, Inc.*, 486 U.S. 399 (1988).[8] Consistent with its "policy of fostering uniform, certain adjudication of disputes over the meaning of collective-bargaining agreements," the *Lingle* Court held: "if the resolution of a state-law claim depends upon the meaning of a collective-bargaining agreement, the application of state law (which might lead to inconsistent results . . .) is pre-empted and federal labor-law principles—necessarily uniform throughout the Nation—must be employed to resolve the dispute." *Id.* at 405-06, 410-11. The Court further noted that it had, in *Avco*, applied *this same preemption principle* "in determining whether a state-law claim brought in state court was properly removed to federal court." *Id.* at 406 n.5.

In *Hawaiian Airlines v. Norris*, 512 U.S. 246 (1994), the Court adopted the standard established in *Lingle* for LMRA ordinary preemption to resolve claims of RLA ordinary preemption. *Id.* at 263. In support of its holding, the Court recognized that the common purposes of the RLA and LMRA, the parallel development of RLA and LMRA pre-emption law, and the "desirability of having a uniform common law of labor law pre-emption" supported the application of the *Lingle* LMRA standard in RLA cases as well. *Id.* at 263 n.9. The Court also noted that it had, in the past, compared collective bargaining agreements made and maintained pursuant to the RLA and the LMRA, concluding

---

[8] Ordinary preemption applies when a defendant successfully argues that a purported state law claim must be dismissed as preempted by the LMRA or RLA.

that both types of agreements were federal contracts governed and enforceable by federal law in the federal courts. *Id.* at 263 (citing *Central Airlines, Inc.*, 372 U.S. at 692).[9]

Despite the Court's similar treatment of preemption under the LMRA and the RLA, the court of appeals in the instant case constructed an erroneous and unwarranted dichotomy between the LMRA and RLA as purported justification for refusing to apply the "complete preemption" doctrine to RLA claims. The court of appeals wrongly focused on the fact that the determination of the *merits* of an LMRA claim and an RLA claim may take place in different forums. According to the court of appeals:

> [A] principal rationale for complete preemption under the LMRA does not apply to the RLA precisely because the RLA grievance procedures are mandatory. Complete preemption ensures the creation of federal common law to avoid the possibility of conflicting substantive interpretations [of collective bargaining disputes]. This uniformity rationale fails in the RLA context, however, because minor disputes under the RLA must be sent to arbitration . . . .

Geddes, 321 F.3d at 1356.

---

[9] This Court's decision in *Boys Markets, Inc. v. Retail Clerks Union, Local 770*, 398 U.S. 235 (1970), reinforces the Court's comparable jurisdictional treatment of the RLA and LMRA. In that case, the Court reversed prior LMRA precedent and applied the RLA approach of *Chicago River* to the LMRA to find that the Norris-LaGuardia Act did not prohibit a federal court strike injunction to enforce arbitration of an LMRA contractual dispute. The Court expressly justified its reversal of LMRA precedent on its holding in *Avco*, which relegated LMRA strike injunction cases to the federal courts. Presumably, if the Court did not think that federal court removal jurisdiction under *Avco* was similarly applicable under the RLA, it would not have relied on the RLA precedent of *Chicago River* as a basis for its *Boys Market* decision under the LMRA.

This perceived distinction between the RLA and the LMRA is artificial. As this Court recognized in *Lingle*, the merits of LMRA contract claims actually are almost always decided by arbitrators, and not the courts. *Lingle*, 486 U.S. 411 n.11 ("Arbitrators are delegated by nearly all collective-bargaining agreements as the adjudicators of contract disputes)." Indeed, the Court reiterated in *Lingle* that one of the central reasons behind the preemption standard it applies to LMRA claims—which is the same that is applied to RLA claims—is "the need to preserve the effectiveness of arbitration." *Id.* at 411. The national labor policy favoring the development of an industrial "common law of the shop" is even stronger under the RLA where National Mediation Board's union representation determinations are system-wide in scope, and collective bargaining agreements typically apply across the United States, as opposed to contracts under the LMRA which apply in "an appropriate bargaining unit." *See* 29 U.S.C. § 159; *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 578-82 (1960) (LMRA representation determinations are based to apply to any appropriate bargaining unit); *see also* Leslie, Douglas C., *The Railway Labor Act* 91-93 (ed. 1995) (RLA crafts and classes).

Moreover, by focusing on the eventual substantive determination of the claim, the court of appeals' analysis skipped the most important step in the process: the federal statutory interest supporting federal court jurisdiction to enforce federally-mandated arbitration procedures. The history of the RLA, reflected in this Court's decisions, shows an overriding federal interest in regulating labor relations in the railroad and airline industry. *See* Sec. I., *supra*. The fact that the RLA relies on adjustment boards rather than the federal courts to *hear* contractual disputes does not diminish the federal interest in ensuring that such disputes are not diverted from the mandatory adjustment board procedures.

In sum, the Court's decisions provide no basis for the Eleventh Circuit's distinction in the complete preemption analysis between the RLA and the LMRA. If anything, the preemptive force of the RLA is stronger than that of the LMRA because the Act was crafted to avoid interruptions to commerce from labor disputes in industries in which bargaining relationships are normally nationwide. *A fortiori*, the federal courts must have jurisdiction to determine whether a purported state law claim is subject to statutorily-mandated system board adjustment under the RLA. Review by this Court is necessary to correct the court of appeals' erroneous failure to apply the complete preemption doctrine under the RLA.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

TERENCE G. CONNOR
LISA R. ASKOWITZ
MORGAN, LEWIS
& BOCKIUS LLP
5300 Wachovia Financial Center
200 South Biscayne Boulevard
Miami, Florida 33131-2339
(305) 415-3000

HARRY RISSETTO *
THOMAS E. REINERT, JR.
MORGAN, LEWIS
& BOCKIUS LLP
1111 Pennsylvania Ave., N.W.
Washington, D.C. 20004
(202) 739-3000

RICHARD A. MALAHOWSKI
JENNIFER BRANDEIS
AMERICAN AIRLINES, INC.
P.O. Box 619616
Dallas/Ft. Worth Airport,
Texas 75261
(817) 967-1260

* Counsel of Record

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 02-13885

ARTHUR GEDDES,
Plaintiff-Appellant,

versus

AMERICAN AIRLINES, INC., TERRY MEENAN,
Defendants-Appellees.

February 21, 2003, Decided

Appeal from the United States District Court
for the Southern District of Florida.
D. C. Docket No. 02-20673-CV-ASG.

Before BARKETT and WILSON, *Circuit Judges*, and LIMBAUGH *, *District Judge*.

OPINION

BARKETT, *Circuit Judge*:

Arthur Geddes, an aircraft technician, originally filed a complaint in Florida state court against his employer American Airlines ("American") claiming damages resulting from the torts of defamation, negligence, and negligent supervision and retention. American, a Texas corporation,

---

* Honorable Stephen N. Limbaugh, United States District Judge for the Eastern District of Missouri, sitting by designation.

removed the case to federal district court, asserting that federal law completely preempted Geddes's state law tort claims, and thus, removal was appropriate on the basis of federal question jurisdiction.[1] Geddes challenged this jurisdictional ground, moving to remand the case back to state court. The district court denied Geddes's motion, finding that the Railway Labor Act ("RLA"), 45 U.S.C. § 184 (1986), completely preempted the state tort claims, and it applied the RLA to dismiss the complaint. Geddes, arguing that removal was improper, appeals from the denial of his motion to remand the case to state court and from the dismissal of his complaint.

BACKGROUND

Geddes's complaint alleges that, during his employment at Miami International Airport, a co-worker reported to management that Geddes had threatened him with violence. American began an investigation of Geddes's alleged misconduct and temporarily suspended him. The complaint alleges that American knew the accusation was false but nonetheless published it and failed to stop the spread of false statements related to it.

American maintains that they acted in accordance with the requirements of the collective bargaining agreement ("Agreement") between American and the Transport Workers Union of America. The Agreement, concerning "rates of pay, rules, and working conditions," was made under and is governed by the RLA, 45 U.S.C. §§ 152, First, and 184. The RLA establishes a mandatory framework for the resolution of "minor disputes" over the interpretation of collective bargaining

---

[1] American also asserted diversity jurisdiction. In response, Geddes amended his complaint to include Florida resident Terry Meenan, a human resources manager at American, and argued that by adding a Florida resident, diversity jurisdiction was eliminated. The district court found no diversity jurisdiction, and that finding is not an issue raised on appeal.

agreements, see *Brotherhood of R.R. Trainmen v. Chicago River & Ind. R.R. Co.*, 353 U.S. 30, 33, 1 L. Ed. 2d 622, 77 S. Ct. 635 (1957), reserving their adjudication exclusively to boards of adjustment. American argued that because the evaluation and adjudication of Geddes's claims would require an interpretation of the Agreement, the complaint in effect raises a federal question, providing the basis for removal to the federal court. American then argued that the federal district court should dismiss the complaint because Geddes's allegations constituted "minor disputes" under the Agreement, and the RLA requires that minor disputes be sent to arbitration. The district court agreed with American and dismissed Geddes's claims. This appeal followed.

On appeal, Geddes argues that removal under 28 U.S.C. § 1441 [2] was improper because: (1) the doctrine of complete preemption does not apply to the Railway Labor Act, and thus the district court lacks jurisdiction over his claims; and (2) even if complete preemption does apply to the RLA, the RLA does not apply to his claims because they lie outside of the collective bargaining agreement governing his employment and do not implicate any interpretation or application of the agreement.

STANDARD OF REVIEW

The issue before us is whether the district court correctly determined that Geddes's claims are completely preempted by the RLA, thus giving the district court jurisdiction. Whether a district court may exercise jurisdiction over a case based upon complete preemption is a question of law that this Court reviews de novo. *BLAB T.V. of Mobile, Inc. v. Comcast Cable Communications, Inc.*, 182 F.3d 851, 854 (11th Cir. 1999).

---

[2] 28 U.S.C. § 1441(a) provides that a defendant may remove any civil action filed in state court to a federal court if the federal court has original jurisdiction over the action, which under 28 U.S.C. § 1441(b) may arise from the diversity of the parties or a federal question.

DISCUSSION

I

In order to determine whether removal to federal court was proper on the grounds that Geddes's claim was completely preempted by federal law, we must again clarify the differences between "complete" preemption and "ordinary" preemption. See *BLAB T.V.*, 182 F.3d at 854. Preemption is the power of federal law to displace state law substantively.[3] The federal preemptive power may be complete, providing a basis for jurisdiction in the federal courts, or it may be what has been called "ordinary preemption," providing a substantive defense to a state law action on the basis of federal law.

More specifically, ordinary preemption may be invoked in both state and federal court as an affirmative defense to the allegations in a plaintiff's complaint. Such a defense asserts that the state claims have been substantively displaced by federal law. See *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392, 96 L. Ed. 2d 318, 107 S. Ct. 2425 (1987); *BLAB T.V.*, 182 F.3d at 855. However, a case may not be removed to federal court on the basis of a federal defense, including that of federal preemption. Caterpillar, 482 U.S. at 393.

---

[3] This power derives from the Supremacy Clause of Article VI of the Federal Constitution, which provides that

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Const. Art. VI, cl. 2. See *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 208, 85 L. Ed. 2d 206, 105 S. Ct. 1904 (1985) (citing *Gibbons v. Ogden*, 22 U.S. 1, 9 Wheat. 1, 6 L. Ed. 23 (1824) (explaining that a state law that is contrary to or interferes with a federal law must yield to the federal law)).

Complete preemption, on the other hand, is a doctrine distinct from ordinary preemption. Rather than constituting a defense, it is a narrowly drawn jurisdictional rule for assessing federal removal jurisdiction when a complaint purports to raise only state law claims. See *id.* at 393. It looks beyond the complaint to determine if the suit is, in reality, "purely a creature of federal law," even if state law would provide a cause of action in the absence of the federal law. Id. It transforms the state claim into one arising under federal law, thus creating the federal question jurisdiction requisite to removal to federal courts. See *Metropolitan Life Ins. v. Taylor*, 481 U.S. 58, 63-64, 95 L. Ed. 2d 55, 107 S. Ct. 1542 (1987) ("Congress may so completely pre-empt a particular area that any civil complaint raising this select group of claims is necessarily federal in character.").

The Supreme Court and this Circuit have found complete preemption only under section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185, and section 502 of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1132(a). See *Anderson v. H & R Block, Inc.*, 287 F.3d 1038, 1042 (11th Cir. 2002); *BLAB T.V.*, 182 F.3d at 855. The Supreme Court has cautioned that complete preemption can be found only in statutes with "extraordinary" preemptive force. See *Caterpillar*, 482 U.S. at 393; *Metropolitan Life*, 481 U.S. at 65. Moreover, that "extra-ordinary" preemptive force must be manifest in the clearly expressed intent of Congress. See *Anderson*, 287 F.3d at 1047; cf. *Metropolitan Life*, 481 U.S. at 66 (finding a clear manifestation of Congress's intent to make causes of action within the scope of section 502 of ERISA removable). Indeed, in "the absence of explicit direction from Congress," the Supreme Court has indicated its reluctance to find the extraordinary preemptive power necessary for complete preemption. *Id.* at 64-65. Thus, the complete preemption inquiry turns on the question of "whether Congress not only intended for a federal statute to provide a defense to state-law

claims, but also intended to confer on defendants the ability to remove a case to a federal forum." *Anderson*, 287 F.3d at 1041.

In summary, a federal law may substantively displace state law under ordinary preemption but lack the extraordinary force to create federal removal jurisdiction under the doctrine of complete preemption. If no other grounds for federal jurisdiction exist in such cases, then it falls to the state courts to assess the merits of the ordinary preemption defense. See *Caterpillar*, 482 U.S. at 398 n.13 (leaving the merits of ordinary preemption arguments to be addressed first by the state court). Under this framework, we address the question of whether the RLA completely preempts Geddes's state law claims and provides the requisite federal question jurisdiction to support removal to the federal court pursuant to 28 U.S.C. § 1441(a).

II

Whether the Railway Labor Act has the extraordinary preemptive force necessary to create federal removal jurisdiction is a question of first impression for this Court. We begin the inquiry into congressional intent by looking first to the language and substance of the Railway Labor Act itself. The RLA regulates labor relations between air carriers and their employees, see 45 U.S.C. § 181, with a general purpose "to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions." 45 U.S.C. § 151a. These disputes, "controversies over the meaning of an existing collective bargaining agreement in a particular fact situation," are known as "minor disputes." *Trainmen*, 353 U.S. at 33, 40. "Congress' purpose in passing the RLA was to promote stability in labor-management relations by providing a comprehensive framework for resolving labor disputes." *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246, 252, 129 L.

Ed. 2d 203, 114 S. Ct. 2239 (1994). This comprehensive framework establishes a system of adjustment boards with exclusive and mandatory jurisdiction to handle minor disputes, see 45 U.S.C. § 184, thus keeping them out of courts altogether. See *Union Pac. R.R. Co. v. Sheehan*, 439 U.S. 89, 94, 58 L. Ed. 2d 354, 99 S. Ct. 399 (1978) ("Congress considered it essential to keep these so-called 'minor disputes' within the Adjustment Board and out of the courts."); *Pyles v. United Air Lines, Inc.*, 79 F.3d 1046, 1050 (11th Cir. 1996) ("Congress intended that these 'minor disputes' be resolved through the grievance procedures of the RLA rather than in federal court."). The RLA permits narrow federal judicial review of adjustment board decisions, see 45 U.S.C. § 153, but the statute includes no language granting general jurisdiction over minor disputes to federal courts.

Looking to the legislative history of the RLA, we see that it represented an agreement to arbitrate certain disputes, see *Trainmen*, 353 U.S. at 37-39 (discussing the legislative history of the mandatory boards of adjustment), but we find nothing to suggest that Congress intended to allow parties to litigate RLA minor dispute claims in federal court. See *Railway Labor Executives Ass'n v. Pittsburgh & Lake Erie R.R. Co.*, 858 F.2d 936, 942 (3d Cir. 1988) (finding no evidence of congressional intent to make RLA claims removable in the legislative history). Nor do we find any indication that Congress intended for federal courts to acquire jurisdiction solely to ensure that minor disputes are redirected from the courts to the boards of adjustment.

In stark contrast, both the LMRA and ERISA have express language creating a federal cause of action for the resolution of disputes. See 29 U.S.C. § 185(a) (1998) ("Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce . . . may be brought in any district court of the United States having jurisdiction of the parties"); 29 U.S.C.

§ 1132(f) (1999) ("The district courts of the United States shall have jurisdiction, without respect to the amount in controversy or the citizenship of the parties, to grant the relief provided for in subsection (a) of this section in any action.").

The federal cause of action language in the LMRA has been interpreted as authorizing federal courts to fashion a body of federal law for enforcement of these collective bargaining agreements. See Textile *Workers Union v. Lincoln Mills of Ala.*, 353 U.S. 448, 451, 1 L. Ed. 2d 972, 77 S. Ct. 912 (1957); see also *Allis-Chalmers*, 471 U.S. at 209-210 (discussing the interpretation of section 301 in Lincoln Mills and subsequent cases). Similarly, the legislative history of ERISA clearly expressed Congress's intent for ERISA suits to "be regarded as arising under the laws of the United States in similar fashion to those brought under section 301 of the [LMRA]." *Metropolitan Life*, 481 U.S. at 65-66 (citing H.R. Conf. Rep. No. 93-1280, p.327 (1974)). This virtually identical statutory language, accompanied by explicit direction from Congress in the legislative history, forms the primary basis for concluding that Congress intended removability by complete preemption under the two statutes. See *Anderson*, 287 F.3d at 1043; *BLAB T.V.*, 182 F.3d at 855; see also *Metropolitan Life*, 481 U.S. at 65-66. The Railway Labor Act's language and legislative history, in contrast, indicate no such clear congressional intent to authorize federal court jurisdiction.[4]

---

[4] Indeed, in Caterpillar, the Supreme Court noted that even under the LMRA, not every dispute concerning employment is completely preempted, even if it is asserted by someone covered by a collective bargaining agreement governed by the LMRA. *Caterpillar*, 482 U.S. at 396 n.10 (clarifying that not all employment-related matters involving unionized employees must be resolved through collective bargaining and governed by federal common law).

In finding complete preemption in this case, the district court reasoned that the similarities between the RLA and the LMRA are sufficiently strong to extend complete preemptive power to the RLA. The district court relied largely on the Supreme Court's opinion in *Hawaiian Airlines*, 512 U.S. 246, 129 L. Ed. 2d 203, 114 S. Ct. 2239, pointing to a footnote that cited "the common purposes of the two statutes, the parallel development of RLA and LMRA [ordinary] pre-emption law, and the desirability of having a uniform common law of labor law pre-emption." District Court Order at 8 (citing *Hawaiian Airlines*, 512 U.S. at 263 n.9) (internal citations omitted).

There is indeed some language in Hawaiian Airlines that might lead one to conclude that the analogy between the LMRA and the RLA should extend to application of the doctrine of complete preemption. However, there are also significant distinguishing factors that persuade us that such language is not controlling here. The primary difference is that Hawaiian Airlines dealt strictly with the substantive defense of ordinary federal preemption as it was applied in state court and was not concerned at all with removal under 28 U.S.C. § 1441(a). The case came before the Supreme Court on certiorari review of a decision by the Hawaii Supreme Court, which had ruled on the ordinary preemption defense. Removal to federal district court through complete preemption was not an issue in the case.

In Hawaiian Airlines, an airline mechanic, Grant Norris, had brought two suits in state court against his former employer for wrongful retaliatory discharge. In both cases, the defendants responded with an ordinary preemption defense, that is, they moved to dismiss for lack of subject matter jurisdiction, arguing that under the RLA, Norris' claims constituted "minor disputes" which must be resolved through arbitration. Thus, the exclusive arbitral procedures of the RLA preempted Norris's state tort claims. The state trial court agreed and dismissed Norris's tort claims in favor of the

arbitration required by the RLA. See *Hawaiian Airlines*, 512 U.S. at 251. On appeal, the Hawaii Supreme Court reversed in both cases, concluding that the RLA did not preempt Norris's state tort actions because the claims did not require interpretation of a collective bargaining agreement. *Id.* at 251-52.

In affirming the Hawaii Supreme Court's decision, the Hawaiian Airlines Court examined the scope of ordinary preemption under the RLA to determine whether Norris's state claims for wrongful retaliatory discharge could be pursued under state law, or whether they constituted a minor dispute that could only be redressed through the RLA arbitral mechanism. See *id.* at 248. Rejecting the "pervasive preemption" of all issues touching on the employment relationship, *id.* at 255 n.5, the Supreme Court held that the RLA's mandatory grievance procedures do not preempt causes of action to enforce rights and obligations independent of a collective bargaining agreement. In doing so, the Court adopted the same standard for ordinary preemption under both the RLA and the LMRA: a state law claim is preempted only if its resolution requires the interpretation of the collective bargaining agreement, but not if the claim turns on purely factual questions that can be resolved without interpreting the agreement. *Id.* at 260-63. Because complete preemption was not an issue in the case, the Court did not engage in any inquiry into congressional intent to permit removal, nor did it have occasion to discuss the standard for complete preemption.

Moreover, in the same footnote cited by the district court, the Supreme Court acknowledged that the LMRA and the RLA "are not identical in language, history and purpose. The LMRA, unlike the RLA, does not mandate arbitration, nor does it prescribe the types of disputes to be submitted to arbitration under bargaining agreements." *Hawaiian Airlines*, 512 U.S. at 263 n.9. Although the similarities between the

two laws lead to the same substantive ordinary preemption standard, the Supreme Court has never analyzed them in the context of complete preemption. For that analysis, we find the differences to be more compelling.

In particular, a principal rationale for complete preemption under the LMRA does not apply to the RLA precisely because the RLA grievance procedures are mandatory. Complete preemption ensures the creation of federal common law to avoid "the possibility of conflicting substantive interpretation under competing legal systems [that] would tend to stimulate and prolong disputes as to its interpretation . . . [and] might substantially impede the parties' willingness to agree to contract terms providing for final arbitral or judicial resolution of disputes." *Allis-Chalmers*, 471 U.S. at 209-210 (quoting *Local 174, Teamsters v. Lucas Flour Co.*, 369 U.S. 95, 104, 7 L. Ed. 2d 593, 82 S. Ct. 571 (1962)). This uniformity rationale fails in the RLA context, however, because minor disputes under the RLA must be sent to arbitration and may not be heard by a court, in contrast to disputes under the LMRA. Both state and federal courts must dismiss a claim as preempted by the RLA once they determine that it requires interpretation of the collective bargaining agreement, see *Hawaiian Airlines*, 512 U.S. 246, 129 L. Ed. 2d 203, 114 S. Ct. 2239, and RLA system boards of adjustment provide the substantive, uniform interpretations of these labor agreements.

We have carefully considered the cases from other circuits cited by American Airlines that recognize complete preemption under the RLA.[5] However, we believe that these

---

[5] See, e.g., *Gore v. Trans World Airlines*, 210 F.3d 944, 949 (8th Cir. 2000); *Shafii v. British Airways*, PLC, 83 F.3d 566, 569 (2d Cir. 1996); *O'Brien v. Duluth, Missabe & Iron Range Ry.*, 27 F.3d 569 (7th Cir. 1994); *Deford v. Soo Line R.R. Co.*, 867 F.2d 1080, 1084-86 (8th Cir. 1989); *Schroeder v. Trans World Airlines, Inc.*, 702 F.2d 189, 191 (9th Cir. 1983).

cases have relied on ordinary preemption principles rather than complete preemption principles, and we therefore do not find them persuasive. Moreover, in this circuit, we are bound by *Anderson*, 287 F.3d 1038, and *BLAB T.V.*, 182 F.3d 851, and their requirement of clear congressional intent to permit removal. Under the analysis contained therein, we conclude that our circuit precedent precludes a finding of complete preemption in this case.

In conclusion, bearing in mind the Supreme Court's "reluctance" to find complete preemption absent any indication of Congress's clear intent to establish federal question jurisdiction, and failing to find such intent, we hold that the doctrine of complete preemption does not apply to the RLA.

III

Because we find that the doctrine of complete preemption does not extend to the RLA's provisions governing minor disputes, we do not have jurisdiction to reach the question of whether Geddes's state claims are in fact preempted by federal law. We agree with the Third Circuit that "state courts are competent to determine whether state law has been preempted by federal law and they must be permitted to perform that function in cases brought before them, absent a Congressional intent to the contrary." *Railway Labor Executives Ass'n*, 858 F.2d at 942. Under Hawaiian Airlines, the standard for the defense of ordinary federal preemption under the RLA is clear. *Hawaiian Airlines*, 512 U.S. at 260-263. In this case, the Florida state court is competent to apply it to Geddes's tort claims and determine whether the RLA preempts them, and it should be allowed to do so.

Because there is no federal question jurisdiction, this case is REVERSED and REMANDED to the district court for proceedings consistent herewith.

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

[Filed June 12, 2002]

Case No. 02-20673-CIV-GOLD-SIMONTON

ARTHUR GEDDES,

Plaintiff,

vs.

AMERICAN AIRLINES, INC., and TERRY MEENAN,

Defendants.

OMNIBUS ORDER

THIS CAUSE is before the court upon the plaintiffs motion to remand (DE #6) and the defendant's motion to dismiss (DE #5). On March 4, 2002, defendant American Airlines, Inc. ("American") removed this case from state court asserting that diversity and federal question subject matter jurisdiction existed over this case, On March 27, 2002, the plaintiff, Arthur Geddes ("Geddes"), filed a motion to remand this case to state court. Notwithstanding its removal of this case, Americann has filed a motion to dismiss. For the reasons that follow, the court finds that Geddes' motion to remand must be denied, and American's motion to dismiss must be granted.

Factual and Procedural Background

Geddes, a Florida resident, is employed by American as an aircraft technician. In 1997, Geddes instituted an employment discrimination lawsuit against American, but that case ended

in 1999. According to Geddes, American employees and supervisors have attempted to force him to resign or to have him fired since he initiated his 1997 complaint.

The instant case arises from an allegedly false statement that was initiated by Ernest Suarez ("Suarez") on July 25, 2001. Geddes claims that Suarez, who also is employed as an aircraft technician by American, made the knowingly faire statement that Geddes threatened to cut his intestines with a piece of metal at the workplace. Geddes says that Suarez made this statement—verbally and in writing with the purpose of having him disciplined or fired, and he published Geddes' alleged threat to J. Fernandez; Pedro Lau, a manager; and Terry Meenan ("Meenan"), the human resources manager.

As a result of the publication of this statement, American management began an investigation of Suarez's accusation. American republished Suarez's, allegations to several individuals, including managers, supervisors, and union representatives, as part of its investigation. On June 25, 2001, three witnesses wrote and signed statements, confirming that Geddes did not threaten Suarez. Despite the statements by these witnesses, Meenan suspended Geddes with pay on June 27, 2001. This suspension resulted in Geddes' loss of overtime and free flying privileges. Geddes claims that American ceased its investigation of the incident on July 1 or 2, 2001, but it continued his suspension until July 18, 2001.

Geddes also states that, on August 1, 2001, American wrote him up with a "First Advisory-—Performance". In this document, American included the allegedly false statements made by Suarez. The document further stated that Geddes had violated the rule against "threatening, intimidating, interfering with, or violent behavior toward another employee". Compl. at ¶ 13. The advisory is now part of Geddes' personnel file, and it can be used against Geddes in the future, as three advisories are grounds for termination.

It is important to note that Geddes' employment is governed by a collective bargaining agreement ("CBA").[1] The CBA contains a managerial rights clause, which states that "(the Union] recognizes that [American] shall have sole jurisdiction of the management and operation of its business, the direction of its working force, the right to maintain discipline and efficiency in its . . . places of employment, and the right of [American] to hire, discipline and discharge employees for just cause, subject to the provisions of this Agreement." CBA dated 8115195 at Art. 28(b). Pursuant to this clause, American has promulgated Rules of Conduct to monitor its employees' behavior at the workplace. Among these rules are the following: "Do not make false or slanderous statements about [American], its employees, or patrons. . . . Threatening, intimidating, interfering with, or violent behavior toward another employee . . . while either on or off duty, is prohibited." Am. Policies and Procedures Manual, Rules 21 and 32.

Article 29(f) of the CBA further provides that "the Union does not question the right of [American's] supervisors to manage and supervise the workforce and make reasonable inquiries of employees, individually or collectively, in the normal course of work." CBA dated 8115195, at Art. 29(f). Pursuant to this clause, American implemented procedures for supervisors to follow when conducting investigations regarding employee misconduct in the workplace. *See* Am. Peak Perf. Through Commitment Procedures. These procedures detail the supervisors to be involved in an investigation of employee misconduct, the questions to be asked during the investigation, and the disciplinary actions to be taken regarding the employees involved.

---

[1] Although Geddes did not attach the CBA to his complaint, the court can consider it in assessing its removal jurisdiction pursuant to the petition for removal and motion for remand. *See Sierminksi v. Transouth Fin. Corp.*, 216 F.3d 945, 949 (11th Cir. 2000).

The CBA requires that, if an employee "believes that he has been unjustly dealt with or that any provision of this Agreement has not been properly applied or interpreted", the employee present his grievance through the mandatory grievance procedures detailed in the CBA. CBA dated 8/15/95, at Art. 31(a).

Based upon Suarez's statement that Geddes threatened to cut his intestines and American's subsequent investigation, Geddes filed a three-count complaint against American in state court on January 31, 2002. This complaint alleged: count I, defamation of character; count 11, negligence; and count III, negligent supervision and retention. American removed Geddes' complaint on March 4, 2002, pursuant to 28 U.S.C. § 1441, American's notice of removal alleges two grounds for federal jurisdiction: federal question jurisdiction under 28 U.S.C. § 1331 and diversity jurisdiction under 28 U.S.C. § 1332. American contends that federal question jurisdiction arises under the Railway Labor Act ("RLA"), 45 U.S.C. § 184, which provides the exclusive procedure for evaluating the justification of an air carrier's disciplinary action against an employee. According to American, the existence of a federal question under the RLA preempts Geddes' state law based claims. Alternatively, American contends that diversity jurisdiction exists in this case because the parties named in Geddes,[2] original complaint are diverse,' and the amount in controversy exceeds $75,000.00.

Geddes filed an amended complaint onMarch 21, 2002, together with a motion to remand this case to state court. Geddes' amended complaint differs from the original only in that it adds Terry Meenan, a Florida resident, as a defendant. On March 25, 2002, American fled a motion to dismiss the original complaint. American also filed a motion to strike and/or dismiss the amended complaint on April 12, 2002. In

[2] Geddes is a Florida resident, and American is a Texas corporation.

its motion to stake, American contends that the amended complaint was improperly filed because Geddes failed to request or obtain leave of court. Additionally, American argues that the amended complaint was filed solely to destroy this court's diversity jurisdiction. American also contends that dismissal of the amended and original complaints is appropriate because the claims alleged in the complaints are preempted by the RLA, and arbitration is mandated by 45 U.S.C. § 184. Alternatively, American argues that Geddes' amended complaint must be dismissed for failure to state a claim.

Analysis

I. Motion to Remand

The first matter that must be considered is Geddes' motion to remand this case to state court: In his motion, Geddes states that American improperly removed his complaint because this court lacks subject matter jurisdiction over his claims. In support of his motion, Geddes makes two arguments. First, he contends that this case is not governed by any federal question. That is, the allegations of his complaint are not preempted by the RLA. Second, he argues that diversity jurisdiction is lacking in that the parties are not diverse and the amount in controversy does not exceed $75,000.00. The analysis below discusses only the first point raised by Geddes. The finding that Geddes' complaint raises a federal question renders American's removal of Geddes' complaint proper, and the court need not resort to the issue of diversity jurisdiction.

A. Standard for Motion to Remand

A defendant's right to remove a case to federal court is conferred by statute. *See Gould v. Mutual Life Ins. Co.*, 790 F.2d 769 (9th Cir. 1989); *see also* 28 U.S.C. § 1441. Construction of removal statutes is governed by federal law. *See Brown v. Demco, Inc.*, 792 F.2d 478 (5th Cir. 1986). Federal

courts uniformly have held that removal statutes must be strictly construed against removal in order to "prevent encroachment on the state court's right to decide cases properly brought before it." *Harris v. Huffco Petroleum Corp.*, 633 F. Supp. 250, 253 (S.D. Ala. 1986). A removing defendant has the burden to prove that the district court has subject matter jurisdiction over the cause and that removal is therefore proper. *See Williams v. Best Buy Co.*, 269 F.3d 1316, 1319 (11th Cir. 2001). Jurisdiction, must be determined on the basis of claims alleged in the pleadings at the time the petition forremoval is filed. *See Pullman Co. v. Jenkins*, 305 U.S. 534, 537, 59 S. Ct. 347, 348-49, 83 L.Ed. 334 (1939). As a result, the court must look to Geddes' original complaint, not his amended complaint, to determine whether removal was proper in this case.

The first basis for removal asserted by American is federal question jurisdiction. This type of jurisdiction requires that the action arise under the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 1331. In deciding whether a federal question exists, a district court must apply the well-pleaded complaint rule, whereby the court looks to the face of the complaint, rather than to any defenses asserted by a defendant. *See Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987); *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 63 (1987); *Anderson v. H&R Block*, 287 F.3d 1038,1041(1 ith Cir. 2002). Consequently, the general rule is that a case may not be removed to federal court on the basis of a federal defense, including the defense of preemption. *See Caterpillar, Inc.*, 482 U.S. at 393; *Anderson*, 287 F.3d at 1042; *see also Louisville & Nashville R.R. v. Mottley*, 211 U.S.149, 152 (1908) (finding that federal question subject matter jurisdiction did not exist where federal question arose solely from defense, not complaint that alleged state claim).

B. Preemption As Grounds For Removal

Geddes' complaint is based on state law tort claims. Under the well-pleaded complaint rule, no federal claim appears on the face of Geddes' complaint. Despite the nature of the complaint's allegations, American contends that federal question subject matter exists over Geddes' claims because they are preempted by the RLA. At a glance, American's argument appears to fall under the general rule that a case may not be removed on the basis of a federal defense. There is, however, an exception to this rule, which applies in this case to give the court federal question jurisdiction. This exception is known as the "complete preemption" doctrine. *See Caterpillar, Inc.*, 482 U.S. at 393; *Metropolitan Life Ins. Co.*, 481 U.S. at 63-64 ("Congress may so completely pre-empt a particular area that any civil complaint raising this select group of claims is necessarily federal in character."); *Anderson*, 287 F.3d at 1042.

The doctrine of complete preemption differs from the defense of simple preemption in that the defense of pre-emption is a question of whether a defense is available under federal law, while complete preemption is a jurisdictional question that focuses on Congress' intent to make the cause of action a federal cause of action and removable, despite the fact that the plaintiffs complaint identifies only state claims. *See Anderson*, 287 F.3d at 1042 n.6; *Hooper v. Albany Int'l Corp.*, 149 F.Supp,2d 1315, 1320 (MD. Ala. 2001) (citing *Whitman v. Raley's, Inc.*, 886 F.2d 1177, 1181 (9th Cir. 1989)); *see also Rice v. Panchal*, 65 F.3d 637, 640 (7th Cir.1995) (explaining difference between complete and conflict/defense preemption). If a removal petition demonstrates that a plaintiff's claims, although appearing as state law claims, are federal in substance, the preemptive force of federal law provides a basis for removal jurisdiction. *See Avco Corp, v. Aero Lodge No. 735*, 390 U.S. 557, 560 (1968); *Copling v. The Container Store, Inc.*, 174 F.3d 590, 595 (5th

Cir. 1999) (explaining difference between complete and conflict/defense preemption and stating that former provides grounds for removal).

C. Preemption Under the RLA

As mentioned above, American contends that Geddes' claims are preempted by the RLA, 45 U.S.C. § 151 *et seq.* Before addressing American's argument, it should be noted that neither the Eleventh Circuit nor the United States Supreme Court has addressed whether the RLA gives rise to complete preemption. In *Anderson v. H&R Block, Inc.*, 287 F.3d 1038 (11th Cir. 2002), however, the Eleventh Circuit cautioned that complete preemption should be found only in limited circumstances. *Id.* at 1042.[3] The Eleventh Circuit identified two circumstances when the Supreme Court has found complete preemption to exist—the Labor Management Relations Act ("LMRA"), 29. U.S.C. § 185, and the Employment Retirement Income Security Act, 29 U.S.C. § 1132(a). *Id.* It went on to hold that the National Banking Act, the statute at issue in the case, did not completely preempt the plaintiff's state law claims. *Id.*

Anderson provides that congressional intent is the "touchstone" of the complete preemption inquiry. *Anderson* also reiterated that the Supreme Court has found the LMRA to provide grounds forremoval. These points are significant because, in *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246 (1994), the Supreme Court stated that preemption under the RLA must be interpreted like preemption under the LMRA. Although *Hawaiian Airlines* dealt with defense preemption, not complete preemption, the Court's preemption analysis of the RLA was guided by an inquiry into congressional intent, the same inquiry that the Eleventh Circuit says must be employed with complete preemption issues. *See Hawaiian*

[3] Neither party has discussed *Anderson* in its briefs on the complete preemption issue.

Air., 512 U.S. 252. The Court stated that the LMRA and the RLA share a "common purpose", that of addressing labor disputes for grievances arising under CBAs. *Id.* at 263 n.9. The Court also emphasized that it was desirous of "having a uniform common law of labor law preemption". *Id.* Most importantly, the Court stated that the standard for examining preemption under the RLA is "virtually identical to the pre-eruption standard the Court employs in cases involving § 301 of the LMRA, 29 U.S.C. § 85." *Id* at 260. As the Eleventh Circuit observed in *Anderson*, § 301 of the LMRA is one of the provisions that gives rise to complete preemption. This provision "ensures that federal law will be the basis for interpreting collective bargaining agreements", which are also the subject of RLA disputes. *Hawaiian Air.* at 262 (citation omitted). If the R.LA is to be interpreted under the same standard as § 301 of the LMRA, and there is a recognized interest in uniformity of preemption principles under both statutes, it follows that under the reasoning of the Supreme Court in *Hawaiian Airlines*, the RLA also can give rise to complete preemption.

The RLA, which applies primarily to labor relations in the airline industry, was established by Congress as "a frame-work for the resolution of disputes between air carriers and their employees that 'grow [ ] out of grievances, or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions.'" *Pilkington v. United Air.*, 112 F.3d 1532,1538 (11th Cir.1997) (quoting *Pyles v. United Air Lines, Inc.*, 79 F.3d 1046, 1049 (11th Cir.1996)). As discussed above, the Supreme Court has adopted the same preemption standard for the RLA as it employs in cases arising under the Lam. *See Pilkington*, 112 F.3d at 1538 (citing *Hawaiian Air., Inc, v. Norris*, 512 U.S. 246, 263 (1994), which revisited standard for preemption of claims by the RLA). This standard precludes preemption of state law claims that enforce rights independent of the CBA. *See Pilkington*, 12 F.3d at 1538. As explained by the Eleventh

Circuit, "The fact that reference to a CBA may be required, particularly where factual issues are involved, is insufficient of itself to preempt an independent state law claim; only where interpretation of a CBA is required will the claim be preempted." *Id.*

Two circuits have addressed facts very similar to those at issue here and have concluded that the plaintiffs' claims were preempted by the statute so as to provide a basis for removal jurisdiction. The first such case is *Gore v. Trans World Airlines*, 210 F.3d 944 (8th Cir. 2000), where the Eighth Circuit held that the plaintiff's libel, slander, and negligence claims were preempted by the RLA, In *Gore*, Harold Smallwood, the plaintiffs coworker, allegedly overheard the plaintiff tell another coworker that lie planned to kill himself and other employees. *Id.* at 947. Smallwood reported this comment to a union steward, who in turn reported the comment to a supervisor. *See id.* This supervisor then initiated an investigation into the incident. *See id.* On the following morning, crew members were instructed not to allow the plaintiff onto the premises. *See id.* The plaintiffs CBA contained a management rights clause, pursuant to which the airline issued rules of conduct proscribing violence, threats of violence, and firearms at the workplace. *See id.* The CBA also required the airline to maintain safe working conditions and to promptly handle complaints involving the safety of working conditions. *See id.* at 948. The plaintiff in *Gore* filed a complaint in state court alleging false arrest, negligence, libel and slander, and invasion of privacy. *See id.* The defendants—then removed the complaint to state court and filed a motion to dismiss on the grounds of preemption. *See Id.*

The Eighth Circuit concluded that removal was proper due to preemption by the RLA. It found that the plaintiffs state law claims were inextricably intertwined with consideration or interpretation of the CBA. *Id.* at 949. This finding was

based primarily upon the fact that the parties' rights and duties under each tort were defined by the governing CBA. The following discussion by the Eighth Circuit is highly relevant to this case:

> While state law has created these tort actions, the collective bargaining agreement is the defining source of the duties specifically owed by the defendants for each claim asserted. . . .
>
> While Gore's complaint avoids mention of the collective bargaining agreement, it indicates that the actions took place in the course and scope of the defendants' employment with TWA, a relationship in fact governed by a collective bargaining agreement that specifically requires TWA to provide a safe working environment and to promptly investigate and handle complaints relating to worker safety.
>
> . . . Given the fact that Gore's alleged statements caused a serious security concern in the workplace, Gore's burden to prove that he was falsely arrested without legal justification will necessarily require an interpretation of the collective bargaining agreement to determine whether the defendants acted contrary to their duties under the agreement. . . .
>
> Likewise, Gore's libel and slander claims will require the court to construe whether the defendants' actions conformed to the rights and duties created under the collective bargaining agreement. . . . The element [of defamation under state law] requiring a showing that the statement was published with the requisite degree of fault will need to be evaluated within the framework of the contract terms governing the standard by which TWA must handle employee safety complaints. The defendants assert that their actions were required by specific provisions of the collective bargaining agreement. . . .

The same can be said about Gore's claim of negligence. In the circumstances presented in this case, where simple negligence is claimed in the manner in which TWA employees (acting within the course and scope of their employment) investigated claim of a threat to other employees, the collective bargaining agreement is the source of the duty of care owed. The duty allegedly breached is defined by the agreement that governs the employment relationship . . . when the collective bargaining contract is the source of the duty allegedly breached, application of the tort remedy is preempted. . . .

Gore's claims are not purely factual but are rooted in an interpretation of the collective bargaining agreement. We do not hold that removal and preemption may be based on a federal defense. Instead, we have concluded that Gore cannot be successful on the claims he has pleaded in this factual situation without interpreting certain terms of the collective bargaining agreement that govern the rights and duties of the parties. . . .

[F]or Gore to prove the elements of the torts he alleged in this case, he will be required of argue the meaning of standards or duties created and defined by the governing collective bargaining agreement. Because the collective bargaining agreement provides the source of the duties allegedly breached or governs the determination of reasonableness under the state law, the resolution of Gore's tort claims will require more than a mere tangenetial reference to the collective bargaining agreement, even though Gore's complaint omits any reference to the collective bargaining agreement. . . .

Gore asserts facts that occurred while the defendants were seeking to respond, according to their duties under the collective bargaining agreement, to a perceived security threat to many employees. The defendants have

> set forth specific provisions of the collective bargaining agreement that they contend governed their actions and prescribed their duties in this factual scenario. Gore cannot establish liability on his tort claims without demonstrating that the defendants' actions were wrongful under a proper interpretation of the relevant rights and duties bargained *for in* the collective bargaining agreement.

Id. at 949-52 (citations omitted); *see also O'Brien v. Duluth, Missabe & Iron Range Ry. Co.*, No. 93-3045,1994 WL 233620 (7th Cir. May 26, 1994) (holding that removal of state court complaint on basis of complete preemption by RLA was proper); *Culp v. United Pacific R.R. Co.*, No. 401CV360, 2001 WL 1862633 (ED. .Mo. Dec. 18, 2001) (same).

The Tenth Circuit employed a similar analysis *in Garley v. Sandia Corp.*, 236 F.3d 1200 (10th Cir, 2001), when it held that the LMRA preempted the plaintiff's defamation claim.[4] The plaintiff in *Garley* was accused of engaging in timecard fraud by his supervisor, and his supervisor began an investigation to determine whether, in fact, he had engaged in such fraud. *Id.* at 1203. Upon concluding the investigation, the defendant employer terminated the plaintiff.

The plaintiff filed a six count complaint against his employer in state court alleging breach of implied contract, breach of the duty of fair dealing, retaliation, civil conspiracy, defamation, and intentional infliction of emotional *distress. See id.* at 1204. The defendant removed the complaint to federal court and filed a motion to dismiss based on preemption under the LMRA. *See id.* In reviewing the plaintiff's defamation claim, the Tenth Circuit stated that it

---

[4] The Supreme Court has stated that the same analysis applies to preemption issues under the LMRA as the RLA. *See Hawaiian Air., Inc. v. Norris*, 512 U.S. 246, 263 (1994). Accordingly, the discussion in *Garley* is highly relevant to this case.

was required to look beyond the allegations of the complaint to determine whether the plaintiffs claims arose from a breach of the defendant's obligations under the CBA. *Id.* at 1211. The Tenth Circuit observed that the plaintiffs defamation claim was based on the theory that his investigation and termination for timecard fraud publicly branded him as dishonest. *Id.* In essence, such a claim "arose out of `the manner' in which the defendant `conducted its investigation of suspected employee misconduct, and the way in which it terminated certain employees'," and, as a result, the claim inevitably required interpretation of the CBA. *Id.* (quoting *Mock v. T.G. & Y Stores, Co.*, 971 F.2d 522, 530 (10th Cir. 1992)). The Tenth Circuit concluded that the defamation claim was preempted because, in order to determine whether the plaintiff had been defamed, the court would have to examine the defendant's rights and obligations under the CBA to determine whether its actions were authorized. *Id.*

Although neither *Gore* nor *Garley* are binding on this court, these cases are highly persuasive authorities that provide valuable insight into the analysis that must be applied to preemption issues under the RLA.[5] First, the background and basic facts of the instant case are very similar to those of

---

[5] The court recognizes that other decisions have held that defamation claims in the employment context were not preempted by the RLA. *See, e.g., Luecke v. Schnucks Markets, Inc.*, 85 F.3d 356 (8th Cir. 1996); *Lozano v. Stamp*, No. Civ 01-029, 2001 WL 775525 (E.D. La. July 9, 2001); *Smith v. Bates*, 787 F. Supp.176 (N.D. Cal. 1992). These cases are inapplicable because, in each decision, the court expressly found that the CBA was not implicated by the plaintiffs' state law claims. *See Luecke*, 85 F.3d at 361; *Lozano* at *3; *Smith*, 787 F. Supp. at 178-79. In contrast, the instant case requires that the CBA be interpreted in order to define the parties' rights and duties. *Cox v. International Union of Operating Engineers*, 672 F.2d 421 (5th Cir.1982), which is relied on by Geddes, also is inapplicable because Cox was decided several years before the Supreme Court announced a revised preemption standard in *Hawaiian Airlines* for cases involving the RLA.

Gore and *Gcirley*. Like the plaintiffs in those cases, Geddes was accused by a coworker of engaging in misconduct at the workplace during working hours. Like those plaintiffs, he has asserted defamation and negligence claims that arise from his employer's investigation procedures. The defamation claims requite a determination of whether the statement at issue was privileged, and this inquiry necessarily requires an interpretation of whether American's alleged statement was consistent with or required by the CBA. Similarly, Geddes' negligence claims will require an evaluation of American's investigative performance against the standard established by the CBA. In short, whether American can be held liable for the conduct of which Geddes complains is a matter that can be resolved only by interpreting the CBA. American's investigatory duties, which are central to the defamation and negligence claims, are defined by the CBA. Additionally, the conduct in which Geddes allegedly engaged, threatening a coworker, is proscribed by the CBA.

One need not reach beyond the complaint to find support for American's position that this case requires interpretation of the CBA. Although not mentioning the CBA by name, Geddes' complaint directly implicates the agreement. For example, Geddes alleges that his supervisors "undertook to investigate the accusation" as a result of the false and defamatory statement made by Suarez. Compl. at ¶ 7. The manner of carrying out such an investigation is described in the CBA. The complaint states that Geddes was accused of violating the rule against "threatening, intimidating, interfering with, or violent behavior toward another employee", and, as discussed above, this rule arises from the CBA. Compl. At ¶ 13. Finally, the injuries of which Geddes complains, suspension, loss of overtime pay, and loss of free flying privileges, are benefits that arise from Geddes' employment and, possibly, the CBA. All of these facts support the application of *Gore* and *Garley* to this case, and such an analysis indicates that Geddes' claims are in fact

federal claims that are completely preempted by the RLA. As such, removal of Geddes' complaint by American to this court was proper.

II. Motion to Dismiss

The second matter that must be decided is American's motion to dismiss Geddes' complaint.[6] According to American, Geddes' claims must be dismissed because they are preempted by the RLA as "minor disputes". Such a dispute may be conclusively resolved by interpreting the existing CBA. *See Pyles v, United Air., Inc.*, 79 F.3d 1046, 1049 (11th Cir.1996) (quoting *Consol. Rail Corp. v. Ry. Labor Exec. Assn*, 491 U.S. 299, 305 (1989)). The court already has determined that interpretation of the CBA, is necessary to determine the merits of Geddes' claims. This means that this case involves minor disputes. As such a case, it must be analyzed under the mechanism established by the RLA, which mandates arbitration, not disposition by a district court, for the resolution of disputes between air carriers and their employees that "grow [ ] out of grievances, or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions". 45 U.S.C. § 184.

According to the Eleventh Circuit, "Congress intended that these 'minor disputes' be resolved through the grievance procedures of the RLA *rather than in federal court." Pilkington*, 79 F.3d at 1538 (emphasis added). As a result, "[When the resolution of a state-law claim . . . requires an interpretation of the CBA, the claim is preempted and must be submitted to arbitration before a system board of adjustment." *Id.* In compliance with the RLA requirement of arbitration, federal courts routinely dismiss state law claims that have been found to be preempted by the statute. *See, e.g.,*

---

[6] Because Geddes' original and amended complaints are nearly identical, with the exception that the latter complaint adds Meenan as a defendant, the following discussion is applicable to both complaints.

Gore v. Traps World Air, 210 F.3d 944 (8th Cir. 2000); *Pilkington v. United Air.*,112 F,3d.l532 (11th Cir.1997); *Culp v. United Pacific R.R. Co.*, No. 401CV360, 2001 WL 1862633 (ED. .Mo. Dec. 18, 2001); *Espiiral v. Northwest Air.*, 90 F.3d 1452 (9th Cir. 1996). This is because "[o]nce the district court has jurisdiction, the complete preemption which conferred jurisdiction [is] sufficient to authorize dismissal on the grounds of preemption". *Deford v. Soo Line R.R. Co.*, 867 F.2d 1080, 1091 (8th Cir.1989). Because the statutory grievance procedures under the RLA are the mandatory and exclusive remedy for resolving minor disputes, Geddes' complaint, which is based only on state law claims that are preempted by the RLA, must be dismissed.

III. Absence of Diversity Jurisdiction

Notwithstanding the preemption analysis discussed above, dismissal due to lack of subject matter j urisdiction still would be appropriate in this case because diversity jurisdiction, the only other possible source o` jurisdiction, does not exist. A district court has the duty to inquire as to the existence of its subject matter jurisdiction. *See Louisville & Nashville RR Co. v. Mottley*, 211 U.S. 149, 151 (1908). While diversity of citizenship existed based upon the original complaint, when Geddes amended his complaint to add Meenan as a parry, diversity ceased to exist. This is because both Geddes and Meenan are Florida residents,[7] *See University of S. Ala. v. Am. Tobacco Co.*, 168 F.3d 405, 412 (11th Cir. 1999) ("Where jurisdiction is predicated on diversity of citizenship, all plaintiffs must be diverse from all defendants.").

---

[7] American correctly notes that the amended complaint cannot be considered in determining the removal issue, but it is appropriate to look at this complaint to determine the continued existence of subject matter jurisdiction after removal. *See Crowe v. Coleman*, 113 F.3d 1536, 1538 (11th Cir.1997).

Additionally, it is not clear from the complaint that the amount in controversy exceeds $75,000.00. Geddes has requested punitive damages in the amount of $5 million in his complaint, but American has not attempted to show that these damages are recoverable to a "legal certainty". *Honey Equip. Co. v. Credit Alliance Corp.*, 821 F.2d 1531, 1535 (11th Cir.1987) (stating that court can consider punitive damages in determining amount in controversy for removal jurisdiction only if removing defendant can show to a "legal certainty" that such damages can be recovered). Other than this request for punitive damages, the plaintiff has not specified an amount of damages in his complaint. American has not submitted any evidence in support of its removal claim that the amount in controversy exceeds $75,000.00 exclusive of interest and costs, nor has American submitted any proof to refute the plaintiffs statement that the complaint does not meet the jurisdictional amount. American also has failed to show that the amount of punitive damages requested by Geddes is recoverable under Florida law or is a realistic assessment of a recoverable amount. This deficiency exists in Geddes' amended complaint to the same extent as it exists in his original complaint. Accordingly, diversity subject matter jurisdiction is absent in this case.

It is hereby:

ORDERED AND ADJUDGED that

1. Geddes' motion to remand this case (DE #6) is DENTED.

2. American's motion to dismiss (DE #5) is GRANTED.

3. The Clerk of the Court shall CLOSE this case.

4. All pending motions are DENIED AS MOOT.

DONE AND ORDERED in Chambers at Miami, Florida, this 11th day of June, 2002.

/s/ Alan S. Gold
THE HONORABLE ALAN S. GOLD
UNITED STATES DISTRICT JUDGE

cc:
Magistrate Judge Andrea Simonton
Donna M. Baliman, Esq.; 4801 S. University Dr., Ste. 3010; Ft. Lauderdale, FL 33328 Terrence G. Connor, Esq.; 200 S. Biscayne Blvd., Ste. 5300; Miami, FL 33131-2339

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NOTICE: Only certain Judges are E-NOTICING, so continue to provide envelopes for cases before nonparticipating Judges Visit the court's websitewww.flsd.uscourts.qov. or call the Help Line (305) 523-5212 for an updated listing of participating Judges.

Notice of Orders or Judgments

Date: 06/13/02

To: Tererce G. Connor (aty)
200 S Biscayne Boulevard
Suite 5300
Miami, FL 33131

Re: Case Number: 1:02-cv-20673

Document Number: 27

NOTE: If you are no longer an attorney in this case, please disregard this notice. Be sure to promptly notify the Clerk of Court in writing of any changes to your name, address, law firm, or fax number. This notification should be sent for each of your active cases. If this facsimile cannot be delivered as addressed, or you have ANY problems with this fax transmission, please call the Help Line (305) 523-5212 and the problem will be rectified. Since this transmission originated from the Clerk's Office, JUDGES CHAMBERS SHOULD NOT BE CONTACTED.

APPENDIX C

TITLE 45.—RAILROADS

CHAPTER 8.—RAILWAY LABOR

GENERAL PROVISIONS

---

45 USCS § 151 (2003)

Review expert commentary from The National Institute for Trial Advocacy

§ 151. Definitions; short title

When used in this Act and for the purposes of this Act—

First. The term "carrier" includes any railroad subject to the jurisdiction of the Surface Transportation Board, any express company that would have been subject to subtitle IV of title 49, United States Code [49 USCS §§ 10101 *et seq.*], as of December 31, 1995,[,] and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier": Provided, however, That the term "carrier" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power.

The Surface Transportation Board is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term "carrier" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to a carrier where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

Second. The term "Adjustment Board" means the National Railroad Adjustment Board created by this Act.

Third. The term "Mediation Board" means the National Mediation Board created by this Act.

Fourth. The term "commerce" means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory and any other Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation.

Fifth. The term "employee" as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Surface Transportation Board now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Board pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders:

Provided, however, That no occupational classification made by order of the Surface Transportation Board shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Board.

The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

Sixth. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

Seventh. The term "district court" includes the Supreme Court of the District of Columbia [United States District Court for the District of Columbia]; and the term "circuit court of appeals [court of appeals]" includes the Court of Appeals of the District of Columbia [United States Court of Appeals for the District of Columbia].

This Act may be cited as the "Railway Labor Act."

TITLE 45.—RAILROADS

CHAPTER 8.—RAILWAY LABOR

GENERAL PROVISIONS

---

45 USCS § 152 (2003)

---

§ 152. General duties

First. Duty of carriers and employees to settle disputes. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. Consideration of disputes by representatives. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

Third. Designation of representatives. Representatives, for the purposes of this Act shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner

to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

Fourth. Organization and collective bargaining; freedom from interference by carrier; assistance in organizing or maintaining organization by carrier forbidden; deduction of dues from wages forbidden. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: Provided, That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

Fifth. Agreements to join or not to join labor organizations forbidden. No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement

promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this Act [enacted May 20, 1926], then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

Sixth. Conference of representatives; time; place; private agreements. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: Provided, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: And provided further, That nothing in this Act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

Seventh. Change in pay, rules or working conditions contrary to agreement or to section 156 forbidden. No carrier, its officers or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act [45 USCS § 156].

Eighth. Notices of manner of settlement of disputes; posting. Every carrier shall notify its employees by printed notices in such form and posted at such times and places as shall be specified by the Mediation Board that all disputes between the carrier and its employees will be handled in

accordance with the requirements of this Act, and in such notices there shall be printed verbatim, in large type, the third, fourth, and fifth paragraphs of this section. The provisions of said paragraphs are hereby made a part of the contract of employment between the carrier and each employee, and shall be held binding upon the parties, regardless of any other express or implied agreements between them.

Ninth. Disputes as to identity of representatives; designation by Mediation Board; secret elections. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers

to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

Tenth. Violations; prosecutions and penalties. The willful failure or refusal of any carrier, its officers or agents to comply with the terms of the third, fourth, fifth, seventh, or eighth paragraph of this section shall be a misdemeanor, and upon conviction thereof the carrier, officer, or agent offending shall be subject to a fine of not less than $ 1,000 nor more than $ 20,000 or imprisonment for not more than six months, or both fine and imprisonment, for each offense, and each day during which such carrier, officer, or agent shall willfully fail or refuse to comply with the terms of the said paragraphs of this section shall constitute a separate offense. It shall be the duty of any district attorney of the United States [United States attorney] to whom any duly designated representative of a carrier's employees may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States, all necessary proceedings for the enforcement of the provisions of this section, and for the punishment of all violations thereof and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States: Provided, That nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

Eleventh. Union security agreements; check-off. Notwithstanding any other provisions of this Act, or of any other statute or law of the United States, or Territory thereof, or any State, any carrier or carriers as defined in this Act and a

labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this Act shall be permitted—

(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: Provided, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership,

(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties), uniformly required as a condition of acquiring or retaining membership, Provided, That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner.

(c) The requirement of membership in a labor organization in an agreement made pursuant to subparagraph (a) shall be satisfied, as to both a present or future employee in engine, train, yard, or hostling service, that is, an employee engaged in any of the services or capacities covered in section 3, first (h) of this act [45 USCS § 153, subsec. First, para. (h)] defining the jurisdictional scope of the first division of the National Railroad Adjustment Board, if said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this act and admitting to membership employees of a craft or class in any of said services; and no agreement made pursuant to subparagraph (b) shall provide for deductions from his wages for periodic dues, initiation fees, or assessments payable to any labor organization other than that in which he holds membership: Provided, however, That as to an employee in any of said services on a particular carrier at the effective date of any such agreement on a carrier, who is not a member of any one of the labor organizations, national in scope, organized in accordance with this act and admitting to membership employees of a craft or class in any of said services, such employee, as a condition of continuing his employment, may be required to become a member of the organization representing the craft in which he is employed on the effective date of the first agreement applicable to him: Provided, further, That nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from one organization to another organization admitting to membership employees of a craft or class in any of said services.

(d) Any provisions in paragraphs fourth and fifth of section 2 of this act [this section] in conflict herewith are to the extent of such conflict amended.

TITLE 45.—RAILROADS

CHAPTER 8.—RAILWAY LABOR

GENERAL PROVISIONS

---

45 USCS § 153 (2003)

---

§ 153. National Railroad Adjustment Board

First. Establishment; composition; powers and duties; divisions; hearings and awards; judicial review. There is hereby established a Board, to be known as the "National Railroad Adjustment Board", the members of which shall be selected within thirty days after approval of this Act [enacted June 21, 1934], and it is hereby provided—

(a) That the said Adjustment Board shall consist of thirty-four members, seventeen of whom shall be selected by the carriers and seventeen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of section 2 of this Act [45 USCS §§ 151a, 152].

(b) The carriers, acting each through its boards of directors or its receiver or receivers, trustee or trustees or through an officer or officers designated for that purpose by such board, trustee or trustees or receiver or receivers, shall prescribe the rules under which its representatives shall be selected and shall select the representatives of the carriers on the Adjustment Board and designate the division on which each such representative shall serve, but no carrier or system of carriers shall have more than one voting representative on any division of the Board.

(c) Except as provided in the second paragraph of subsection (h) of this section, the national labor organizations, as defined in paragraph (a) of this section, acting each through the chief executive or other medium designated by the organization or association thereof, shall prescribe the rules under which the labor members of the Adjustment Board shall be selected and shall select such members and designate the division on which each member shall serve; but no labor organization shall have more than one voting representative on any division of the Board.

(d) In case of a permanent or temporary vacancy on the Adjustment Board, the vacancy shall be filed by selection in the same manner as in the original selection.

(e) If either the carriers or the labor organizations of the employees fails to select and designate representatives to the Adjustment Board, as provided in paragraphs (b) and (c) of this section, respectively, within sixty days after the passage of this Act [enacted June 21, 1934], in case of any original appointment to office of a member of the Adjustment Board, or in case of a vacancy in any such office within thirty days after such vacancy occurs, the Mediation Board shall thereupon directly make the appointment and shall select an individual associated in interest with the carriers or the group of labor organizations of employees, whichever he is to represent.

(f) In the event a dispute arises as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate, and if such claim in the judgment of the Secretary of Labor has merit, the Secretary shall notify the Mediation Board accordingly,

and within ten days after receipt of such advice the Mediation Board shall request those national labor organizations duly qualified as per paragraph (c) of this section to participate in the selection and designation of the labor members of the Adjustment Board to select a representative. Such representative, together with a representative likewise designated by the claimant, and a third or neutral party designated by the Mediation Board, constituting a board of three, shall within thirty days after the appointment of the neutral member, investigate the claims of the labor organization desiring participation and decide whether or not it was organized in accordance with section 2 hereof [45 USCS §§ 151a, 152] and is otherwise properly qualified to participate in the selection of the labor members of the Adjustment Board, and the findings of such boards of three shall be final and binding.

(g) Each member of the Adjustment Board shall be compensated by the party or parties he is to represent. Each third or neutral party selected under the provisions of (f) of this section shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while serving as such third or neutral party.

(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

First division: To have jurisdiction over disputes involving train- and yard-service employees of carriers, that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-

service employees. This division shall consist of eight members, four of whom shall be selected and designated by the carriers and four of whom shall be selected and designated by the labor organizations, national in scope and organized in accordance with section 2 hereof [45 USCS §§ 151a, 152] and which represent employees in engine, train, yard, or hostling service; Provided, however, That each labor organization shall select and designate two members on the First Division and that no labor organization shall have more than one vote in any proceedings of the First Division or in the adoption of any award with respect to any dispute submitted to the First Division: Provided further, however, That the carrier members of the First Division shall cast no more than two votes in any proceedings of the division or in the adoption of any award with respect to any dispute submitted to the First Division.

Second division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, car men, the helpers and apprentices of all the foregoing, coach cleaners, power-house employees, and railroad-shop laborers. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of the employees.

Third division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees. This division shall consist of ten mem-

bers, five of whom shall be selected by the carriers and five by the national labor organizations of employees.

Fourth division: To have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions. This division shall consist of six members, three of whom shall be selected by the carriers and three by the national labor organizations of the employees.

(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act [enacted June 21, 1934], shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.

(k) Any division of the Adjustment Board shall have authority to empower two or more of its members to

conduct hearings and make findings upon disputes, when properly submitted, at any place designated by the division: Provided, however, That except as provided in paragraph (h) of this section, final awards as to any such dispute must be made by the entire division as hereinafter provided.

(l) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as "referee", to sit with the division as a member thereof and make an award. Should the division fail to agree upon and select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board shall be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this Act for the appointment of arbitrators and shall fix and pay the compensation of such referees.

(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute. In case a dispute arises involving an interpretation of the award the division of the Board upon request of either party shall interpret the award in the light of the dispute.

(n) A majority vote of all members of the division of the Adjustment Board eligible to vote shall be competent to make an award with respect to any dispute submitted to it.

(o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement for the payment of money, to pay to the employee the sum to which he is entitled under the award on or before a day named. In the event any division determines that an award favorable to the petitioner should not be made in any dispute referred to it, the division shall make an order to the petitioner stating such determination.

(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be conclusive on the parties, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a

reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board: Provided, however, That such order may not be set aside except for failure of the division to comply with the requirements of this Act, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order.

(q) If any employee or group of employees, or any carrier, is aggrieved by the failure of any division of the Adjustment Board to make an award in a dispute referred to it, or is aggrieved by any of the terms of an award or by the failure of the division to include certain terms in such award, then such employee or group of employees or carrier may file in any United States district court in which a petition under paragraph (p) could be filed, a petition for review of the division's order. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Adjustment Board. The Adjustment Board shall file in the court the record of the proceedings on which it based its action. The court shall have jurisdiction to affirm the order of the division or to set it aside, in whole or in part, or it may remand the proceeding to the division for such further action as it may direct. On such review, the findings and order of the division shall be conclusive on the parties, except that the order of the division may set aside, in whole or in part, or remanded to the division, for failure of the division to comply with the requirements of this Act, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction,

or for fraud or corruption by a member of the division making the order. The judgment of the court shall be subject to review as provided in sections 1291 and 1254 of title 28, United States Code.

(r) All actions at law based upon the provisions of this section shall be begun within two years from the time the cause of action accrues under the award of the division of the Adjustment Board, and not after.

(s) The several divisions of the Adjustment Board shall maintain headquarters in Chicago, Illinois, meet regularly, and continue in session so long as there is pending before the division any matter within its jurisdiction which has been submitted for its consideration and which has not been disposed of.

(t) Whenever practicable, the several divisions or subdivisions of the Adjustment Board shall be supplied with suitable quarters in any Federal building located at its place of meeting.

(u) The Adjustment Board may, subject to the approval of the Mediation Board, employ and fix the compensations of such assistants as it deems necessary in carrying on its proceedings. The compensation of such employees shall be paid by the Mediation Board.

(v) The Adjustment Board shall meet within forty days after the approval of this Act [enacted June 21, 1934] and adopt such rules as it deems necessary to control proceedings before the respective divisions and not in conflict with the provisions of this section. Immediately following the meeting of the entire Board and the adoption of such rules, the respective divisions shall meet and organize by the selection of a chairman, a vice chairman, and a secretary. Thereafter each division shall annually designate one of its members to act as chairman and one of its members to act as vice

chairman: Provided, however, That the chairmanship and vice-chairmanship of any division shall alternate as between the groups, so that both the chairmanship and vice-chairmanship shall be held alternately by a representative of the carriers and a representative of the employees. In case of a vacancy, such vacancy shall be filled for the unexpired term by the selection of a successor from the same group.

(w) Each division of the Adjustment Board shall annually prepare and submit a report of its activities to the Mediation Board, and the substance of such report shall be included in the annual report of the Mediation Board to the Congress of the United States. The reports of each division of the Adjustment Board and the annual report of the Mediation Board shall state in detail all cases heard, all actions taken, the names, salaries, and duties of all agencies, employees, and officers receiving compensation from the United States under the authority of this Act, and an account of all moneys appropriated by Congress pursuant to the authority conferred by this Act and disbursed by such agencies, employees, and officers.

(x) Any division of the Adjustment Board shall have authority, in its discretion, to establish regional adjustment boards to act in its place and stead for such limited period as such division may determine to be necessary. Carrier members of such regional boards shall be designated in keeping with rules devised for this purpose by the carrier members of the Adjustment Board and the labor members shall be designated in keeping with rules devised for this purpose by the labor members of the Adjustment Board. Any such regional board shall, during the time for which it is appointed, have the same authority to conduct hearings, make findings upon disputes and adopt the same procedure as the division of

the Adjustment Board appointing it, and its decisions shall be enforceable to the same extent and under the same processes. A neutral person, as referee, shall be appointed for service in connection with any such regional adjustment board in the same circumstances and manner as provided in paragraph (l) hereof, with respect to a division of the Adjustment Board.

Second. System, group, or regional boards: establishment by voluntary agreement; special adjustment boards: establishment, composition, designation of representatives by Mediation Board, neutral member, compensation, quorum, finality and enforcement of awards. Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this Act, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board.

If written request is made upon any individual carrier by the representative of any craft or class of employees of such carrier for the establishment of a special board of adjustment to resolve disputes otherwise referable to the Adjustment Board, or any dispute which has been pending before the Adjustment Board for twelve months from the date the dispute (claim) is received by the Board, or if any carrier makes such a request upon any such representative, the carrier or the representative upon whom such request is made shall join in an agreement establishing such a board within thirty days from the date such request is made. The cases which may be considered by such board shall be defined in

the agreement establishing it. Such board shall consist of one person designated by the carrier and one person designated by the representative of the employees. If such carrier or such representative fails to agree upon the establishment of such a board as provided herein, or to exercise its rights to designate a member of the board, the carrier or representative making the request for the establishment of the special board may request the Mediation Board to designate a member of the special board on behalf of the carrier or representative upon whom such request was made. Upon receipt of a request for such designation the Mediation Board shall promptly make such designation and shall select an individual associated in interest with the carrier or representative he is to represent, who, with the member appointed by the carrier or representative requesting the establishment of the special board, shall constitute the board. Each member of the board shall be compensated by the party he is to represent. The members of the board so designated shall determine all matters not previously agreed upon by the carrier and the representative of the employees with respect to the establishment and jurisdiction of the board. If they are unable to agree such matters shall be determined by a neutral member of the board selected or appointed and compensated in the same manner as is hereinafter provided with respect to situations where the members of the board are unable to agree upon an award. Such neutral member shall cease to be a member of the board when he has determined such matters. If with respect to any dispute or group of disputes the members of the board designated by the carrier and the representative are unable to agree upon an award disposing of the dispute or group of disputes they shall by mutual agreement select a neutral person to be a member of the board for the consideration and disposition of such dispute or group of disputes. In the event the members of the board designated by the parties are unable, within ten days after their failure to agree upon an award, to agree upon the selection of such

neutral person, either member of the board may request the Mediation Board to appoint such neutral person and upon receipt of such request the Mediation Board shall promptly make such appointment. The neutral person so selected or appointed shall be compensated and reimbursed for expenses by the Mediation Board. Any two members of the board shall be competent to render an award. Such awards shall be final and binding upon both parties to the dispute and if in favor of the petitioner, shall direct the other party to comply therewith on or before the day, named. Compliance with such awards shall be enforcible by proceedings in the United States district courts in the same manner and subject to the same provisions that apply to proceedings for enforcement of compliance with awards of the Adjustment Board.

TITLE 45.—RAILROADS

CHAPTER 8.—RAILWAY LABOR

CARRIERS BY AIR

---

45 USCS § 181 (2003)

---

§ 181. Application of 45 USCS § 151, 152, 154-163 to carriers by air

All of the provisions of Title I of this Act [45 USCS §§ 151-163], except the provisions of section 3 thereof [45 USCS § 153], are extended to and shall cover every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service.

TITLE 45.—RAILROADS

CHAPTER 8.—RAILWAY LABOR

CARRIERS BY AIR

---

45 USCS § 184 (2003)

---

§ 184. System, group, or regional boards of adjustment

The disputes between an employee or group of employees and a carrier or carriers by air growing out of grievances, or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act [enacted April 10, 1936] before the National Labor Relations Board, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to an appropriate adjustment board, as hereinafter provided, with a full statement of the facts and supporting data bearing upon the disputes.

It shall be the duty of every carrier and of its employees, acting through their representatives, selected in accordance with the provisions of this title [45 USCS §§ 181 *et seq.*] to establish a board of adjustment of jurisdiction not exceeding the jurisdiction which may be lawfully exercised by system, group, or regional boards of adjustment, under the authority of section 3, Title I, of this Act [45 USCS § 153].

Such boards of adjustment may be established by agreement between employees and carriers either on any individual carrier, or system, or group of carriers by air and any class or classes of its or their employees; or pending the establishment of a permanent National Board of Adjustment as hereinafter provided. Nothing in this Act shall prevent said carriers by

air, or any class or classes of their employees, both acting through their representatives selected in accordance with provisions of this title [45 USCS §§ 181 *et seq.*], from mutually agreeing to the establishment of a National Board of Adjustment of temporary duration and of similar limited jurisdiction.

Supreme Court, U.S.
FILED
SEP 8 2003
OFFICE OF THE CLERK

No. 03-52

In The

Supreme Court of the United States

AMERICAN AIRLINES, INC., and TERRY MEENAN,

Petitioners,

v.

ARTHUR GEDDES,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION

GARY M. SCHAAF, ESQUIRE*
Counsel of Record
CAROLYN MYERS-SIMMONDS, ESQUIRE
BECKER & POLIAKOFF, P.A.
2401 West Bay Drive
Suite 414
Largo, Florida 33770
(727) 559-0588
(727) 581-4063 Telefax
Attorneys for the Respondent

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Whether the Eleventh Circuit Court of Appeals erred in concluding that the Railway Labor Act (hereinafter the "RLA" or the "Act"), 45 U.S.C. § 151, *et seq.*, does not completely preempt state law tort claims so as to allow for removal, pursuant to 28 U.S.C. § 1441(b), of a cause of action by an airline employee against his employer for retaliatory acts.

PARTIES TO THE PROCEEDING

The parties to the proceedings are those listed in the caption of the case.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	v
RESPONDENT'S BRIEF IN OPPOSITION	1
OPINIONS BELOW	1
JURISDICTION	1
STATUTORY PROVISIONS	1
STATEMENT OF THE CASE	1
Factual Background	1
SUMMARY OF ARGUMENT	4
THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED	5
I. AS THE ELEVENTH CIRCUIT'S DECISION IS CONSISTENT WITH AND SUPPORTED BY THIS COURT'S PRECEDENTS ON THE ISSUE OF COMPLETE PREEMPTION, INCLUDING ITS MOST RECENT DECISION IN *BENEFICIAL NAT'L BANK V. ANDERSON,* NO REVIEW IS NECESSARY	5
The *Beneficial Nat'l Bank* Tests	7
1. Congressional Intent	8
2. Substantive and Procedural Law Must Be Provided	11
Hawaiian Airlines	12

TABLE OF CONTENTS – Continued

Page

II. THE ELEVENTH CIRCUIT'S DECISION DOES NOT DISPLACE THE ROLE OF THE FEDERAL COURTS TO ENFORCE OR SET ASIDE ORDERS OF THE ADJUSTMENT BOARD UNDER THE RLA 14

III. THE PETITION IDENTIFIES NO CONFLICT IN THE LOWER COURTS THAT WOULD NECESSITATE THIS COURT'S REVIEW 17

CONCLUSION 21

TABLE OF AUTHORITIES

Page

FEDERAL CASES

Atchison, T.&S.F.R. Co. v. Buell, 480 U.S. 557 (1987).....19, 20

Avco Corp. v. Aero Lodge No. 735, International Assoc. of Machinists and Aerospace Workers, 390 U.S. 557 (1968).....7, 8

Beneficial Nat'l Bank v. Anderson, 539 U.S. ___, 123 S. Ct. 2058, 156 L. Ed. 2d 1 (2003) .....*passim*

Cipollone v. Liggett Group, Inc., 505 U.S. 504 (1992).....16

Caterpillar Inc. v. Williams, 482 U.S. 386 (1987).....6, 17

CSX Transportation, Inc. v. Easterwood, 507 U.S. 658 (1993).....16

Franchise Tax Board of the State of California v. Construction Laborers Vacation Trust for Southern California, 463 U.S. 1 (1983).....8, 20

Gore v. Trans World Airlines, 210 F.3d 944 (8th Cir. 2000).....6, 18, 19, 21

Hawaiian Airlines, Inc. v. Norris, 512 U.S. 246 (1994).....*passim*

Ingersoll-Rand Co. v. McClendon, 498 U.S. 133 (1990).....20

Lingle v. Norge Div. Of Magic Chef, Inc., 486 U.S. 399 (1988).....16

Metropolitan Life Insurance Company v. Taylor, 481 U.S. 58 (1987).....*passim*

O'Brien v. Duluth, Missabe & Iron Range Ry., 27 F.3d 569 (7th Cir. 1994).....6, 17

TABLE OF AUTHORITIES – Continued

Page

Puerto Rico Department of Consumer Affairs v. Isla Petroleum Corporation, 485 U.S. 495 (1988) 15

Railway Labor Executives Ass'n v. Pittsburgh & Lake Erie R.R. Co., 858 F.2d 936 (3rd Cir. 1988) 6

Schroeder v. Trans World Airlines, Inc., 702 F.2d 189 (9th Cir. 1983) 6, 20

Shafii v. British Airways, PLC, 83 F.3d 566 (2nd Cir. 1996) 6, 17

Wisconsin Public Intervenor v. Mortier, 501 U.S. 597 (1991) 16

STATUTES

28 U.S.C. § 1441(b) 3

Labor Management Relations Act, 29 U.S.C. § 185 ..... 3, 8

Employee Retirement Income Security Act, 29 U.S.C. § 1132(a) 3, 11

29 U.S.C. § 1132(f) 9

Railway Labor Act, 45 U.S.C. § 151 *et seq* 1

45 U.S.C. § 152, Sixth 14

45 U.S.C. § 153, First (i) 14

45 U.S.C. § 153, Second 14

45 U.S.C. § 153(p) 14

45 U.S.C. § 184 14

MISCELLANEOUS

H.R. Conference Report No. 93-1280 (1974) 9

RESPONDENT'S BRIEF IN OPPOSITION

Respondent, Arthur Geddes respectfully submits this Brief in Opposition to the Petition for a Writ of Certiorari.

OPINIONS BELOW

The opinion of the court of appeals is set forth in Petitioner's Brief (App. A) and is reported at 321 F.3d 1349 (11th Cir. 2003). The opinion of the district court is also set forth in Petitioner's Brief (App. B) and is not reported.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS

This case concerns the Railway Labor Act, 45 U.S.C. § 151 *et seq.*, the pertinent portions of which are set forth in Appendix C, of Petitioner's Brief.

STATEMENT OF THE CASE

Factual Background

Geddes is an aircraft technician employed by American Airlines, Inc. ("American") at the Miami International Airport. Geddes brought an employment discrimination lawsuit against American, in 1997, which suit was ultimately dismissed.

On or about August 2, 2001, Geddes filed a discrimination complaint against American, with the Equal Employment Opportunity Commission ("EEOC"), asserting that, since Geddes initiated his 1997 complaint, certain employees and supervisors had demonstrated retaliatory and malicious intent toward Geddes in an attempt to force him to resign or to have him fired. As an example of such retaliatory treatment, when a co-worker made knowingly false statements that Geddes had threatened to do him bodily harm at the workplace, American, with knowledge of the falsity of such statements, ratified, repeated, and republished the statements to its agents, officers, directors, and employees, as well as union representatives, and included the statements in Geddes' permanent personnel file.

Geddes thereafter filed a complaint against American in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, styled *Geddes v. American Airlines, Inc.*, Case No. 02-03105-CA-13. The complaint alleged state law claims of defamation of character (Count I), negligence (Count II), and negligent supervision and retention (Count III), based upon the retaliatory actions set forth above.

On March 4, 2002, American removed Geddes' action to the United States District Court for the Southern District of Florida, asserting both diversity of citizenship and federal question subject matter jurisdiction. After complete diversity was destroyed by the joinder of Petitioner Meenan, the case was removed solely on the basis of federal question jurisdiction. American thereafter filed a Motion to Dismiss the Geddes complaint, asserting (1) that Geddes' claims were preempted by the RLA, and (2) that

Geddes' complaint failed to state claims upon which relief could be granted.

In response, Geddes filed a motion to remand the case to the state court and a response to American's Motion to Dismiss. In his Motion to Remand, Geddes contended that the District Court lacked subject matter jurisdiction over his state law claims.

In an Omnibus Order, dated June 12, 2002, the District Court denied Geddes' Motion to Remand and granted American's Motion to Dismiss. The District Court's rulings were premised upon both simple preemption (also known as "ordinary preemption"), as to the motion to dismiss, and complete preemption, as to Geddes' motion for remand. Specifically, on the remand issue, the District Court found that, because the RLA completely preempted the state law underlying Geddes' claims, Geddes' complaint, although asserting purely state law causes of action, was properly removed, under 28 U.S.C. § 1441(b), as arising under federal law. The court went on to dismiss Geddes' claims, holding that they comprised "minor disputes" which, under the RLA, could only be submitted to statutorily mandated boards of adjustment.

The Eleventh Circuit reversed and remanded, finding that this Court had then recognized the doctrine of complete preemption in only two very narrow circumstances: § 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185, and § 502(a) of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1132(a); and that, pursuant to this Court's opinions in *Metropolitan Life Insurance Company v. Taylor*, 481 U.S. 58 (1987), and *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246 (1994), because the RLA contains no clear manifestation of

Congress' intent to establish federal question jurisdiction therein, the doctrine of complete preemption does not apply to such statute. This Court has since reiterated the test applied by the court below, in *Beneficial Nat'l Bank v. Anderson*, 539 U.S. ___, 123 S. Ct. 2058, 156 L. Ed. 2d 1 (2003).

The Petitioners having filed a Petition for Writ of Certiorari requesting review by this Court, the Respondent files this Brief in Opposition thereto.

SUMMARY OF ARGUMENT

This Court has recently held, in *Beneficial Nat'l Bank*, that federal legislation completely preempts state law, so as to provide for federal court removal jurisdiction, only (1) where Congressional intent to confer federal court jurisdiction is clearly manifested in the text of the statute or in the legislative history thereto, as in § 301 of the LMRA and § 502(a) of ERISA; or (2) where the statutory scheme wholly displaces state law by providing an exclusive cause of action, including the substantive law and the procedures governing such claims, as in the case of usury claims against national banks under the National Bank Act. As the RLA comes within neither of the two prongs of the *Beneficial Nat'l Bank* test, the court below correctly found that federal removal jurisdiction, based upon complete preemption of state law, did not exist under the RLA, and remanded the plaintiff's cause of action to state court.

As this Court has, earlier this year in *Beneficial Nat'l Bank*, clearly and explicitly set forth the test for determining whether a federal statute will completely preempt

state law, there is no need for the Court to revisit the issue in this context.

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED

I. AS THE ELEVENTH CIRCUIT'S DECISION IS CONSISTENT WITH AND SUPPORTED BY THIS COURT'S PRECEDENTS ON THE ISSUE OF COMPLETE PREEMPTION, INCLUDING ITS MOST RECENT DECISION IN *BENEFICIAL NAT'L BANK V. ANDERSON*, NO REVIEW IS NECESSARY.

The Eleventh Circuit's holding herein is consistent with this Court's complete preemption decisions, including the Court's recent decision in *Beneficial Nat'l Bank v. Anderson*, 539 U.S. ___, 123 S. Ct. 2058, 156 L. Ed. 2d 1 (2003). As the Court in *Beneficial Nat'l Bank*, and in its earlier preemption decisions (including the Court's decision refusing to apply ordinary preemption under the RLA in *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246, 114 S. Ct. 2239, 129 L. Ed. 2d 203 (1994)), (a) has set forth at length the test for determining the applicability of the complete preemption doctrine to federal statutes, including the RLA, (b) has shown that complete preemption does not apply in the context presented herein, and (c) has ruled repeatedly in accordance with the Eleventh Circuit's holding herein, there exists no need for the Court to further consider the issues presented by the Petitioners.

Moreover, the Petitioners' claim of a conflict in authorities among the circuits is overstated. Specifically, while the Petitioners assert that decisions of the Second, Seventh, Eighth and Ninth Circuits all support their

position that claims falling within the purview of the RLA are subject to complete preemption, such is not the case. In fact, the decisions of the Second and Seventh Circuits cited by the Petitioners, *Shafii v. British Airways, PLC,* 83 F.3d 566 (2nd Cir. 1996) and *O'Brien v. Duluth, Missabe & Iron Range Ry.*, 27 F.3d 569 (7th Cir. 1994), address neither removal nor complete preemption, concerning, rather, only ordinary preemption issues. As this Court has made clear, the concepts of ordinary preemption and complete preemption are wholly different, and the mere existence of ordinary federal preemption will not confer federal court removal jurisdiction. *Caterpillar Inc. v. Williams*, 482 U.S. 386, 393 (1987).

While the decision of the Eleventh Circuit below and the decision of the Third Circuit in *Railway Labor Executives Ass'n v. Pittsburgh & Lake Erie R.R. Co.*, 858 F.2d 936 (3rd Cir. 1988), also finding no complete preemption under the RLA, may be at odds with the Eighth Circuit decision in *Gore v. Trans World Airlines, Inc.*, 210 F.3d 944 (8th Cir. 2000), and the Ninth Circuit decision in *Schroeder v. Trans World Airlines, Inc.*, 702 F.2d 189 (9th Cir. 1983), the Eighth and Ninth Circuit decisions (addressed at length in Section III, below), each of which predated *Beneficial Nat'l Bank*, are no longer valid, in light of that decision, and particularly in light of this Court's *Hawaiian Airlines* decision, refusing to apply even ordinary federal preemption in the context of the RLA. Having set forth, in *Beneficial Nat'l Bank*, the proper tests for determining the application of complete preemption to a federal statute, the Court need not again address such considerations in this context.

As such, the Petition should be denied.

The *Beneficial Nat'l Bank* Tests

Beneficial Nat'l Bank considered whether a state law usury action filed against a national bank may be removed to federal court, pursuant to the doctrine of complete preemption. In determining that state law usury claims against national banks are preempted by federal law, the Court clarified the standards by which a cause of action based on state law may be removed to federal court, under the doctrine of complete preemption. Such standards, as propounded by the Court, are inconsistent with the Petitioners' position herein, and with the Eighth and Ninth Circuit decisions relied upon by the Petitioners herein.

The Court, in *Beneficial Nat'l Bank*, stated:

> . . . [A] state claim may be removed to federal court in only two circumstances – when Congress expressly so provides, such as in the Price-Anderson Act, . . . or when a federal statute wholly displaces the state-law cause of action through complete preemption.

Beneficial Nat'l Bank, 539 U.S. at ___, 123 S. Ct. at 2063. As to the latter situation, the Court recognized that the complete preemption doctrine had only been applied to § 301 of the Labor Management Relations Act of 1947 ("LMRA"), in *Avco Corp. v. Aero Lodge No. 735, International Assoc. of Machinists and Aerospace Workers*, 390 U.S. 557, 88 S. Ct. 1235, 20 L. Ed. 2d 126 (1968), and to § 502(a) of the Employee Retirement Income Security Act of 1974 ("ERISA"), in *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 107 S. Ct. 1542, 95 L. Ed. 2d 55 (1987).

1. Congressional Intent

The Court in *Beneficial Nat'l Bank* invoked its prior rulings in *Avco*, *Franchise Tax Board of the State of California v. Construction Laborers Vacation Trust for Southern California*, 463 U.S. 1, 103 S. Ct. 2841, 77 L. Ed. 2d 420 (1983), and *Metropolitan Life*, in holding that (1) the text of the statute in question, as well as (2) the legislative history thereof, must be considered in determining whether Congress had clearly manifested its intent that causes of action falling within the purview of such statute would arise under the laws of the United States. *Beneficial Nat'l Bank*, 539 U.S. at ___, 123 S. Ct. at 2063.

With regard to its decision in *Avco*, concerning § 301 of the LMRA, the Court, in *Beneficial Nat'l Bank*, explained that it had construed the statute as "not only preempting state law but also authorizing removal of actions that sought relief only under state law," and that, "[t]he necessary ground of decision was that the pre-emptive force of § 301 is so powerful as to displace entirely any state cause of action 'for violation of contracts between an employer and a labor organization.'" *Beneficial Nat'l Bank*, 539 U.S. at ___, 123 S. Ct. at 2063 (citing *Franchise Tax Board*, 463 U.S. at 23-24).

In § 301 of the LMRA, Congress specifically conferred federal court jurisdiction, as follows:

> Suits for violation of contracts between an employer and labor organization ... may be brought in any district court of the United States having jurisdiction of the parties without respect to the amount in controversy or without regard to the citizenship of the parties.

29 U.S.C. § 185(a).

Similarly, the Court in *Metropolitan Life* found that Congress specifically conferred federal court jurisdiction upon claims falling within the purview of § 502(a) of ERISA, as follows:

> [T]he district courts of the United States shall have jurisdiction, without respect to the amount in controversy or the citizenship of the parties, to grant the relief provided for in subsection (a) of this section in any action.

29 U.S.C. § 1132(f). Further, as the Court noted in *Metropolitan Life*, the Conference Report on ERISA, describing the civil enforcement provisions of Section 502(a), says:

> With respect to suits to enforce benefit rights under the plan or to recover benefits under the plan which do not involve application of the Title I provisions, they may be brought not only in U.S. district courts but also in State courts of competent jurisdiction. All such actions in Federal or State courts are to be regarded as arising under the laws of the United States in similar fashion to those brought under Section 301 of the Labor Management Relations Act of 1947.

Metropolitan Life, 481 U.S. at 65-66 (quoting, H.R.Conf.Rep. No. 93-1280, p. 327 (1974)). The Court recognized that the text of the statute, as well as the conference report, made it unmistakably clear that "Congress has clearly manifested an intent to make causes of action within the scope of the civil enforcement provisions of § 502(a) of [ERISA] removable to federal court." *Metropolitan Life*, 481 U.S. 58, 66, 107 S. Ct. 1542, 1548 (1987).

Equally noteworthy, Justice Brennan, joined by Justice Marshall, wrote separately in *Metropolitan Life* to underscore that the relevant congressional intent was not

an intent that the statute should displace state law, but rather an intent that claims purportedly based on state law be removable:

> While I join the court's opinion, I note that our decision should not be interpreted as adopting a broad rule that any defense premised on congressional intent to preempt state law is sufficient to establish removal jurisdiction. The Court holds only that removal jurisdiction exists when, as here "Congress has clearly manifested an intent to make causes of action removable to federal court." In future cases involving other statutes, the prudent course for a federal court that does not find a clear congressional intent to create removal jurisdiction will be to remand the case to state court.

Metropolitan Life, 107 S. Ct. at 1548 (Brennan, J., concurring).

Under *Beneficial Nat'l Bank* and *Metropolitan Life*, congressional intent to confer federal removal jurisdiction must be shown in the statute, or in its legislative history. In this regard, *Metropolitan Life* and *Beneficial Nat'l Bank* have made clear that, absent the above quoted language from § 301 and § 502(a), neither the LMRA nor ERISA would be deemed to completely preempt state law. The RLA contains no language similar to that in the LMRA or ERISA. As such, the Eleventh Circuit was quite correct in its ruling that the RLA in no way evidences such a Congressional intent.

2. Substantive and Procedural Law Must Be Provided

This Court held, in *Beneficial Nat'l Bank*, that, absent the type of language contained in § 301 of the LMRA and § 502(a) of ERISA, to support a finding of federal removal jurisdiction, a federal statute must wholly displace a state law cause of action. The Court further held that, in order to wholly displace a state law cause of action, a federal statute must provide the exclusive cause of action, including the substantive law and the procedures governing such claims.

The Court in *Beneficial Nat'l Bank* held that:

> In the two categories of cases where this Court has found complete preemption – certain causes of action under the LMRA and ERISA – the federal statutes at issue provided the exclusive cause of action for the claim asserted and also set forth procedures and remedies governing that cause of action. See 29 U.S.C. § 1132 (setting forth procedures and remedies for civil claims under ERISA); § 185 (describing procedures and remedies for suits under the LMRA).

Beneficial Nat'l Bank, 539 U.S. at ___, 123 S. Ct. at 2063.

In finding that the National Bank Act completely preempted the field as to usury claims against national banks, *Beneficial Nat'l Bank* held that Sections 85 and 86 of the National Bank Act serve two distinct purposes: Section 85 setting forth the substantive limits on the rates of interest that national banks may charge, and Section 86 setting forth the elements of a usury claim against a national bank, providing for a two year statute of limitations for such claims, and prescribing the available

remedies and the procedures governing such claims. *Beneficial Nat'l Bank*, 539 U.S. at ___, 123 S. Ct. at 2063.

In contrast to the National Bank Act, the RLA merely provides for a mandatory arbitral mechanism to handle certain disputes. As such, as set forth at length in *Hawaiian Airlines*, the RLA does not provide causes of action (much less *exclusive* causes of action) for negligence or defamation by an airline employee against his employer. The arbitral forum provided by the RLA cannot be equated with the "exclusive cause of action" and "procedures and remedies governing that cause of action" required for complete preemption, under *Beneficial Nat'l Bank*. *Beneficial Nat'l Bank*, 539 U.S. at ___, 123 S. Ct. at 2063.

Hawaiian Airlines

This Court, in *Hawaiian Airlines*, found that the RLA, "sets up a mandatory arbitral mechanism to handle disputes growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions." *Hawaiian Airlines*, 512 U.S. at 248. The Court, in determining that an airline employee's state law claim for wrongful termination was not preempted by the RLA's mandatory "arbitral mechanism," specifically found, in accordance with the House Report accompanying the 1934 amendment to the RLA, that the RLA was intended "to provide sufficient and effective means for the settlement of minor disputes known as 'grievances,' which develop from the interpretation and/or application of the contracts between the labor unions and the carriers, fixing wages and working conditions." *Hawaiian Airlines*, 512 U.S. at 254-256.

The Court further held that (1) "no proposed interpretation [of the RLA] demonstrates a clear and manifest congressional purpose to create a regime that broadly preempts substantive protections extended by the States, independent of any negotiated labor agreement"; (2) that a reading of the RLA "does not compel the conclusion that all issues touching on the employment relationship must be resolved through arbitration or that all claims involving rights or duties that exist independent of the [collective bargaining agreement] are thereby pre-empted"; and (3) "that the enactment by Congress of the [RLA] was not a preemption of the field of regulating working conditions themselves . . . " *Hawaiian Airlines*, 512 U.S. at 255-257.

Hawaiian Airlines further stands for the proposition that state law claims such as those asserted by Geddes herein, are not subject to the RLA's mandatory arbitral procedure and thus are not preempted, stating:

> Here . . . the CBA is not the "only source" of respondent's right not to be discharged wrongfully. In fact, the "only source" of the right respondent asserts in this action is state tort law. Wholly apart from any provision of the CBA, petitioners had a state-law obligation not to fire respondent in violation of public policy or in retaliation for whistle-blowing. The parties' obligation under the RLA to arbitrate disputes arising out of the application or interpretation of the CBA did not relieve petitioners of this duty.

Hawaiian Airlines, 512 U.S. at 258. As such, it is clear, under *Hawaiian Airlines*, that the RLA simply does not wholly displace state tort law regarding claims airline employees make against their employers, as asserted by the Petitioners.

As the Eleventh Circuit's decision herein is consistent with the comprehensive analysis and decision in *Beneficial Nat'l Bank* regarding the complete preemption doctrine, there is no need for the Court to revisit the foregoing issues herein.

II. THE ELEVENTH CIRCUIT'S DECISION DOES NOT DISPLACE THE ROLE OF THE FEDERAL COURTS TO ENFORCE OR SET ASIDE ORDERS OF THE ADJUSTMENT BOARD UNDER THE RLA.

Petitioners assert that the RLA provision, at 45 U.S.C. § 153(p), providing that final decisions of the adjustment boards contemplated thereunder are to be enforced by the federal district courts, manifests Congressional intent that the federal courts would have original jurisdiction over all claims filed by airline employees against their employers. Such Congressional intent is nowhere evidenced in the text of the RLA, or in its legislative history.

The RLA requires that disputes growing out of grievances or out of the interpretation or application of collective bargaining agreements covering rates of pay, rules, or working conditions (commonly called "minor disputes"), be resolved, first through conferences between the carrier and employee representatives (45 U.S.C. § 152, Sixth; 45 U.S.C. § 153, First (i); 45 U.S.C. § 184); and, if such method fails, by an adjustment board composed of representatives of the carriers and of the unions (45 U.S.C. § 153, First (i), Second, § 184).

State law claims, in order to fall within the RLA adjustment board procedure, must require, for their resolution, an interpretation of the subject collective

bargaining agreement. *Hawaiian Airlines*, 512 U.S. at 257-263 ("We have held that the RLA's mechanism for resolving minor disputes does not preempt causes of action to enforce rights that are independent of the collective bargaining agreement"). As such, many state law claims will not be subject to such procedure. Moreover, even in the case of state law tort claims which are found to fall within the purview of the RLA, the Act does not provide for jurisdiction over such claims in federal court or in any other court. Rather, such claims are relegated to the exclusive jurisdiction of the adjustment board.

While Petitioners point to portions of the RLA which, in their view, indicate that Congress was concerned about uniformity in the regulation of the airlines and railroads, such generalized concerns, standing alone, are not sufficient to provide the requisite clear indication of preemptive intent. As this Court has held:

> While we have frequently said that preemption analysis requires ascertaining congressional intent, See e.g., *Louisiana Public Service Comm'n*, [476 U.S. 355, 369 (1986)] we have never meant that to signify congressional intent in a vacuum, unrelated to the giving of meaning to an enacted statutory text. There is no text [here] . . . that might plausibly be thought to imply exclusivity – to which expression of preemptive intent in legislative history might attach. . . . [U]nenacted approvals, beliefs and desires are not laws. Without a text that can, in light of those statements, plausibly be interpreted as prescribing federal preemption it is impossible to find preemption of [state tort law claims] [*Puerto Rico Dept. of Consumer Affairs v. Isla Petroleum Corp.*, 485 U.S. 495, 501 (1988)].

See also, *CSX Transportation, Inc. v. Easterwood*, 113 S. Ct. 1732, 1737 (1993); *Cipollone v. Liggett Group, Inc.*, 112 S. Ct. 2608, 2618 (1992); *Wisconsin Public Intervenor v. Mortier*, 111 S. Ct. 2476, 2481-83 (1991). As set forth above, the RLA contains no text evidencing Congress' preemptive intent.

Here, Geddes claims that American disseminated false and defamatory information about him. Such claims arise under state law and require, for their resolution, no interpretation of the RLA or of the subject collective bargaining agreement. Rather, such resolution requires only the factual determination of whether American published such defamatory information and, if so, whether it did so with the intent to retaliate against Geddes for his earlier discrimination claim.

This Court recognized in *Lingle v. Norge Div. Of Magic Chef, Inc.*, 486 U.S. 399, 407 (1988), and reiterated in *Hawaiian Airlines*, that litigating a state law retaliatory claim presents purely factual questions pertaining to the "conduct of the employee and the conduct and motivation of the employer," and that neither required a "court to interpret any term of a collective bargaining agreement." *Hawaiian Airlines*, 512 U.S. at 261 (citing *Lingle*, at 486 U.S. at 407).

Because, as this Court ruled in *Hawaiian Airlines* and *Lingle*, certain state law claims are not subject to the mandatory arbitral mechanism provided in the RLA (i.e., claims that do not require the interpretation or application of a collective bargaining agreement), courts will, from time to time, be called upon to determine whether state law claims come within the purview of such mechanism. If it is determined that such a claim falls within the RLA, it

will be directed to the appropriate adjustment board for arbitration. If it is determined that such a claim does not fall within the RLA, it will be permitted to go forward in court. There is absolutely no indication in the text or legislative history of the RLA that Congress intended such state law claims to be removable to federal court for the purpose of such determination, only to be remanded in the event that the claim is found to fall outside the purview of the RLA.

III. THE PETITION IDENTIFIES NO CONFLICT IN THE LOWER COURTS THAT WOULD NECESSITATE THIS COURT'S REVIEW.

As set forth above, while the Petitioners assert that decisions of the Second, Seventh, Eighth and Ninth Circuits all support their position that claims falling within the purview of the RLA are subject to complete preemption, such is not the case. The decisions of the Second and Seventh Circuits cited by the Petitioners, *Shafii v. British Airways, PLC*, 83 F.3d 566 (2nd Cir. 1996) and *O'Brien v. Duluth, Missabe & Iron Range Ry.*, 27 F.3d 569 (7th Cir. 1994), address neither removal nor complete preemption, concerning, rather, only ordinary preemption issues. As this Court has made clear, the concepts of ordinary preemption and complete preemption are wholly different, and the mere existence of ordinary federal preemption will not confer federal court removal jurisdiction upon a cause of action. *Caterpillar Inc. v. Williams*, 482 U.S. 386, 393.

In light of this Court's decisions in *Beneficial Nat'l Bank* and *Hawaiian Airlines*, the Eighth and Ninth Circuit decisions cited by Petitioners as being in conflict

with the Eleventh Circuit decision below, are inappropriate for review by this Court. *Hawaiian Airlines* and *Beneficial Nat'l Bank*, together, effectively resolve any uncertainty which may have existed concerning application of the complete preemption doctrine to federal statutes.

The Eighth Circuit in *Gore v. Trans World Airlines*, 210 F.3d 944 (8th Cir. 2000), held that state law claims of false arrest, negligence, libel and slander, and invasion of privacy, asserted by an airline employee against his employer, were completely preempted by the RLA. 210 F.3d at 951. Specifically, upon hearing that Gore was alleged to have made statements to the effect that he intended to kill himself and various other TWA employees, TWA took various actions, including holding Gore against his will and publicizing his alleged statements, through the posting of notices and otherwise. The Eighth Circuit, in reviewing the district court's denial of Gore's motion to remand the case to state court following removal, held that, because the collective bargaining agreement at issue required TWA to provide a safe working environment and to promptly investigate and handle complaints relating to worker safety, and because TWA would likely rely upon such provisions to defend its actions regarding Gore, Gore's state law claims were thus "inextricably intertwined" with the rights and duties created by the collective bargaining agreement, thus providing for federal removal jurisdiction. *Id.* at 950.

The "inextricably intertwined" test applied in *Gore* is wholly at odds with the tests prescribed by this Court in *Beneficial Nat'l Bank*. Specifically, *Gore* made no attempt to determine whether Congress had manifested its intent that state law claims between airline employees and their

employers be removable to federal court. Rather, the court in *Gore* created an overbroad test, inconsistent with any test propounded by this Court, pursuant to which virtually any state law claim can be said to be "intertwined" with the collective bargaining agreement and thus removable.

In *Hawaiian Airlines*, this Court held, in the context of ordinary preemption, that the plaintiff's state law claim of wrongful discharge was not preempted by the RLA, even though the plaintiff could have sought redress through the RLA's arbitral mechanism. In finding no preemption, the Court stated that "no proposed interpretation [of the RLA] demonstrates a clear and manifest congressional purpose to create a regime that broadly preempts substantive protections extended by the States, independent of any negotiated labor agreement." *Hawaiian Airlines*, 512 U.S. at 255-56.[1]

This Court's decision in *Hawaiian Airlines* clearly precludes application of the "inextricably intertwined" test espoused in *Gore*. First, the Court in *Hawaiian Airlines* cited to the decision in *Atchison, T.&S.F.R. Co. v. Buell*, 480 U.S. 557, 94 L. Ed. 2d 563, 197 S. Ct. 1410 (1987), which held that railroad employee claims arising under the Federal Employers' Liability Act ("FELA") would not be preempted by the RLA mandatory arbitration procedures, simply because the conduct at issue was subject to the collective bargaining agreement. The Court in *Atchison* held:

---

[1] While the Court in *Hawaiian Airlines* addressed only the issue of ordinary preemption, the rulings therein precluded a finding that the RLA completely preempts state law, under the tests set forth in *Beneficial Nat'l Bank*.

> It is inconceivable that Congress intended that a worker who suffered a disabling injury would be denied recovery under the FELA simply because he might also be able to process a narrow labor grievance under the RLA to a successful conclusion.

480 U.S. at 564-65. Such holding is wholly inconsistent with the test espoused in *Gore*, pursuant to which virtually any state law claim will be swallowed up by the collective bargaining agreement and, thus, the RLA arbitral mechanism.

The *Gore* court failed to demonstrate any clear and manifest congressional intent to completely pre-empt substantive state law, much less to create removal jurisdiction under the RLA. This Court has held that "to discern Congress' intent, we examine the explicit statutory language and structure and purpose of the statute." See *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 138, 111 S. Ct. 478, 483, 112 L. Ed. 2d 474 (1990) (holding that the explicit language, structure and purpose of a statute must demonstrate a congressional intent to pre-empt a state common law claim). The Eighth Circuit in *Gore*, failed to follow the standards established by this Court not only in *Hawaiian Airlines*, but also in its complete preemption decisions, including *Metropolitan Life, Franchise Tax Board* and, most recently, *Beneficial Nat'l Bank*.

Petitioners assert the Ninth Circuit decision in *Schroeder v. Trans World Airlines, Inc.*, 702 F.2d 189 (9th Cir. 1983), as another example of a circuit court decision in conflict with the court below. *Schroeder*, however, was decided prior to and without the benefit of this Court's decisions in *Hawaiian Airlines* and *Beneficial Nat'l Bank*.

As such, like *Gore*, it applies no proper test for determining whether the complete preemption doctrine is applicable to the RLA, is inconsistent with *Beneficial Nat'l Bank*, and effectively equates the complete preemption doctrine with the concept of ordinary preemption.

As stated above, in light of its comprehensive analysis and decision in *Beneficial Nat'l Bank*, there is no need for the Court to revisit the foregoing issues herein. In the event that, in the wake of the *Beneficial Nat'l Bank* decision, the Eighth or Ninth Circuit persists in misapplying the law regarding complete preemption, the Court could review any such decisions as they are rendered.

CONCLUSION

The court below ruled correctly in accordance with the tests for complete preemption set forth in *Beneficial Nat'l Bank*. As such, this Court need not review such decision.

In *Beneficial Nat'l Bank*, the court found that federal legislation will be held to completely preempt state law, so as to provide for federal court removal jurisdiction, only (1) where Congressional intent to confer federal court jurisdiction is clearly manifested in the text of the statute or in the legislative history thereto, as in § 301 of the LMRA and § 502(a) of ERISA; or (2) where the statutory scheme wholly displaces state law by providing an exclusive cause of action, including the substantive law and the procedures governing such claims, as in the case of usury claims against national banks under the National Bank Act. As the RLA comes within neither of the two prongs of the *Beneficial Nat'l Bank* test, the court below correctly found that federal removal jurisdiction, based upon complete

preemption of state law, did not exist, remanding the Respondent's cause of action to state court.

As this Court has, earlier this year in *Beneficial Nat'l Bank*, clearly and explicitly set forth the tests for determining whether a federal statute will completely preempt state law, which tests clearly apply to preclude such preemption under the RLA, there is no need for the Court to revisit the issue in this context.

For the foregoing reasons, Respondent respectfully requests that this Honorable Court deny the Petition.

Respectfully submitted,

GARY M. SCHAAF, ESQUIRE
Counsel of Record
CAROLYN MYERS-SIMMONDS, ESQUIRE
BECKER & POLIAKOFF, P.A.
2401 West Bay Drive
Suite 414
Largo, Florida 33770
(727) 559-0588
(727) 581-4063 Telefax

Attorneys for the Respondent

3

Supreme Court, U.S.
FILED
SEP 22 2003
OFFICE OF THE CLERK

No. 03-52

IN THE

Supreme Court of the United States

AMERICAN AIRLINES, INC., and TERRY MEENAN,
Petitioners,

v.

ARTHUR GEDDES,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

TERENCE G. CONNOR
LISA R. ASKOWITZ
MORGAN, LEWIS
& BOCKIUS LLP
5300 Wachovia Financial Center
200 South Biscayne Boulevard
Miami, Florida 33131-2339
(305) 415-3000

RICHARD A. MALAHOWSKI
JENNIFER BRANDEIS
AMERICAN AIRLINES, INC.
P.O. Box 619616
Dallas/Ft. Worth Airport,
Texas 75261
(817) 967-1260

HARRY RISSETTO *
THOMAS E. REINERT, JR.
MORGAN, LEWIS
& BOCKIUS LLP
1111 Pennsylvania Ave., N.W.
Washington, D.C. 20004
(202) 739-3000

* Counsel of Record

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

60

6 pp

IN THE

Supreme Court of the United States

No. 03-52

AMERICAN AIRLINES, INC., and TERRY MEENAN,
Petitioners,

v.

ARTHUR GEDDES,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

American Airlines, Inc., and Terry Meenan respectfully file a reply brief in support of their petition for a writ of certiorari to review the judgment of the court of appeals in this case.

ARGUMENT

Petitioners file the following Reply Brief to address a single point: the confusion raised by Respondent's incorrect reliance on the ***ordinary preemption*** principles established by the Court in *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246 (1994), to argue that ***complete preemption*** should not apply to claims requiring interpretation of a collective bargaining agreement under the Railway Labor Act (RLA), 45 U.S.C. § 151, *et seq.* *Hawaiian Airlines* addressed *only* ordinary

preemption. The Court's decision does *not* stand for the overstated proposition urged by Respondent that the RLA fails the test for complete preemption recently reiterated by the Court in *Beneficial National Bank v. Anderson*, ___ U.S. ___, 123 S. Ct. 2058 (June 2, 2003).

The issue in *Hawaiian Airlines* did not involve removal to federal court under the complete preemption analysis. The ordinary preemption question presented was "whether an aircraft mechanic who claims in state court that he was discharged for refusing to certify the safety of a plane that he considered unsafe and for reporting his safety concerns to the Federal Aviation Administration may pursue available state law remedies for wrongful discharge, or whether he may seek redress only through the RLA's arbitral mechanism." *Id.* at 248. This is not the issue raised in the instant Petition, which is: Whether a state court claim that does require interpretation of a collective bargaining agreement can be removed to federal court on the basis of complete preemption.[1]

The *Hawaiian Airlines* Court determined the issue of ordinary preemption under the RLA in accordance with the standard established in *Lingle v. Norge Division of Magic Chef, Inc.*, 486 U.S. 399 (1988), for ordinary preemption of

---

[1] Respondent, in a counterstatement of the Question Presented, claims that his state law tort claim is "a cause of action against his employer for retaliatory acts." *Respondent's Brief in Opposition* at i. In contrast to *Hawaiian Airlines*, however, where the tort pled was "wrongful retaliatory discharge," here the torts pled were "defamation, negligence, and negligent supervision and retention," Appendix 1a, 9a-10a, and directly challenge the collective bargaining agreement investigation process—typical subject matters for preemption. In addition, Geddes in fact filed separately an EEOC charge for retaliation which is *not* the subject of this litigation. Thus, Respondent's attempt to invoke *Hawaiian Airlines* through references to "retaliation" is unsupported by the facts and the record.

claims under the Labor Management Relations Act (LMRA), 29 U.S.C. § 185, *et seq.*[2] *Hawaiian Airlines*, 512 U.S. at 263. Under the *Lingle* and *Hawaiian Airlines* standard for ordinary preemption, where the resolution of a state law claim depends on an interpretation of the collective bargaining agreement, the claim is preempted and subject to the arbitral procedures favored under the LMRA and statutorily-mandated under the RLA. *Id.* at 261-263. If, however, a state law claim involves rights and obligations that exist independent of the collective bargaining agreement, under both *Lingle* and *Hawaiian Airlines*, the state law claim is not preempted by the LMRA or RLA, respectively, and may be maintained in a state or federal judicial forum. *Id.* at 260.

The language cited by Respondent from *Hawaiian Airlines* goes only to this issue of ordinary preemption, and reiterates the Court's holding that the RLA does not require system board adjustment of state law claims that are independent of a collective bargaining agreement. *See Respondent's Brief in Opposition* at 13.[3] The *Hawaiian Airlines* case did not address the issues of removal or complete preemption in those circumstances where the state law claim does, in fact,

---

[2] As set forth in the Petition, that the Court has recognized both ordinary preemption and complete preemption under the LMRA, and adopted the same standard for ordinary preemption of LMRA and RLA claims, supports similar application of complete preemption principles under both labor laws. *Petition* at 12-13.

[3] The Court in *Hawaiian Airlines* determined that the claims for wrongful discharge in that case derived from rights and obligations grounded in state law and did not require an interpretation of the collective bargaining agreement between the parties. *Hawaiian Airlines*, 512 U.S. at 258, 266. Accordingly, those claims were not preempted under the ordinary preemption standard of the RLA and LMRA and could be maintained in court.

require interpretation of the collective bargaining agreement.[4] Nor does the referenced language compel the overbroad assertion by Respondent that the RLA cannot *completely preempt* claims such as Geddes' state law claims under the *Beneficial National Bank* framework for purposes of removal jurisdiction.

Hawaiian Airlines does not address or undermine Petitioners' argument demonstrating the need for certiorari review to ensure that through complete preemption the federal courts serve the critical role of protecting the RLA's adjustment board procedures, in the same manner in which the federal courts through complete preemption protect collectively-bargained arbitration procedures pursuant to the LMRA. *See Avco Corp.*, 390 U.S. at 558.

---

[4] Similarly, the complete preemption issue under the LMRA was not addressed in *Lingle*, but in the Court's decision in *Avco Corp. v. Aero Lodge No. 735, International Assoc. of Machinists and Aerospace Workers*, 390 U.S. 557 (1968).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

TERENCE G. CONNOR
LISA R. ASKOWITZ
MORGAN, LEWIS
& BOCKIUS LLP
5300 Wachovia Financial Center
200 South Biscayne Boulevard
Miami, Florida 33131-2339
(305) 415-3000

HARRY RISSETTO *
THOMAS E. REINERT, JR.
MORGAN, LEWIS
& BOCKIUS LLP
1111 Pennsylvania Ave., N.W.
Washington, D.C. 20004
(202) 739-3000

RICHARD A. MALAHOWSKI
JENNIFER BRANDEIS
AMERICAN AIRLINES, INC.
P.O. Box 619616
Dallas/Ft. Worth Airport,
Texas 75261
(817) 967-1260

* Counsel of Record